

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

PATRICK BRADY, et al., : HONORABLE JOSEPH E. IRENAS  
:   
Plaintiffs, :   
: Civil Action No. 02-2917 (JEI)  
v. :   
:   
: **JURY VERDICT**  
AIR LINE PILOTS :   
ASSOCIATION, et al. :   
:   
Defendants. :   
\_\_\_\_\_ :

We, the jury, unanimously find the following by a  
preponderance of the evidence:

(1) Did Defendant Air Line Pilots Association violate its  
duty of fair representation to the TWA Pilots?

Answer: Yes X No \_\_\_\_\_

**IF YOU ANSWERED "YES" TO QUESTION (1), PROCEED TO QUESTION (2).  
IF YOU ANSWERED "NO" TO QUESTION (1), PLEASE STOP; YOUR  
DELIBERATIONS ARE OVER. THE JURY FOREPERSON MUST SIGN THE LAST  
PAGE OF THIS VERDICT FORM.**

(2) Did Defendant Air Line Pilots Association's violation of its duty of fair representation directly cause injury to some of the TWA Pilots?

Answer: Yes ~~\_\_\_\_\_~~ No \_\_\_\_\_

PLEASE STOP; YOUR DELIBERATIONS ARE OVER. THE JURY FOREPERSON  
MUST SIGN THE LAST PAGE OF THIS VERDICT FORM.

SO SAY WE ALL, this 13 day of July, 2011.

Foreperson

# **EXHIBIT 2**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

PATRICK BRADY, et al.,	:	HONORABLE JOSEPH E. IRENAS
	:	
Plaintiffs,	:	
	:	Civil Action No. 02-2917(JEI)
v.	:	
	:	<b>JURY CHARGE</b>
	:	
AIR LINE PILOTS	:	
ASSOCIATION, et al.,	:	
	:	
Defendants.	:	
	:	

---

Ladies and Gentlemen of the Jury:

**§ 1 Introduction to the Final Charge--Province of the Court and of the Jury**

Now that you have heard all of the evidence to be received in this trial and the arguments of counsel it becomes my duty and privilege to give you the final instructions of the Court as to the law that will guide you in your decisions.

The Plaintiffs in this matter are several individuals, Howard Hollander, Sally Young, Patrick Brady, Ted Case and Michael Finucan. They are former pilots for TWA and TWA, LLC. In this action, these individuals are pursuing this litigation not only on their own behalf, but they also represent a class of plaintiffs consisting of some of the approximately 2,300 individuals who were pilots of TWA as of April of 2002.

As you have heard, the defendant, the Air Line Pilots

fair representation" and requires a union to act in the best interests of its members in the manner I will describe to you hereafter.

The TWA Pilots claim that ALPA breached its duty of fair representation by failing to protect the TWA Pilots' seniority as part of TWA's merger with American Airlines and the subsequent merger of the two pilot groups. ALPA denies these claims and contends that it represented the TWA pilots appropriately under the difficult circumstances presented by TWA's poor financial situation.

In order to prove their case, the TWA Pilots will have to establish by a preponderance of the evidence that ALPA's representation of the TWA Pilots was either arbitrary or motivated by bad faith.

If Plaintiffs prove that ALPA's conduct was arbitrary or motivated by bad faith, they must then prove a tangible injury resulting from that conduct in order to prevail. A labor union can only be held liable for breach of its duty of fair representation if its breach directly causes injury to an individual or group to whom the duty is owed. In this case, proving injury means that Plaintiffs are required to demonstrate that, but for ALPA's breach of its duty of fair representation, the overall outcome of the integration of the TWA Pilots into American would have been more favorable.

# **EXHIBIT 3**

1 IN THE UNITED STATES DISTRICT COURT.  
2 FOR THE DISTRICT OF NEW JERSEY  
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,  
5 HOWARD HOLLANDER, THEODORE CASE,  
6 AND MICHAEL FINUCAN, individually  
7 and on behalf of all others  
8 similarly situated,  
9 Plaintiffs,

10 V.

VOLUME 19  
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,  
12 Defendant.

CAMDEN, NEW JERSEY  
JULY 12, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS  
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD  
17 BY: NICOLE M. ACCHIONE, ESQ.  
18 AND: LISA J. RODRIGUEZ, ESQ.  
19 AND  
20 GREEN JACOBSON, P.C.  
21 BY: ALLEN PRESS, ESQ. (MO. BAR)  
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)  
23 For the Plaintiffs.

24 ARCHER GREINER  
25 BY: STEVEN FRAM, ESQ.  
AND  
KATZ & RANZMAN  
BY: DANIEL M. KATZ, ESQ.  
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBURG, ESQ.  
IN-HOUSE COUNSEL FOR ALPA.



1 still obnoxious from the TWA pilots' side, but that is what  
2 they did.

3 Now, what happened after that? They go into this  
4 facilitated negotiation process, all throughout the summer,  
5 meeting after meeting after meeting. I don't know how many  
6 meetings. I know it was more than ten, Mike Day testified  
7 to. And throughout that the APA does nothing. They don't  
8 come off this position one iota to out that whole process in  
9 the summer.

10 And then after 9-11, a week after 9-11, they write  
11 a letter to Mike Day saying we are done. We are done talking  
12 to you, we are going to go to our board, and we are going to  
13 do what we want. At that point, 14, 15, was still the offer.  
14 What happened next? The TWA pilots got involved. They went  
15 to Senator Bond, got him involved. And Bond announces this  
16 bill that would give arbitration to the TWA pilots, had it  
17 passed. That was on October first that that announcement was  
18 made.

19 This is just some Senator saying hey, I got this  
20 bill, I put on the floor.

21 What happened next? American pilots come back to  
22 the table on their own and say hey, we got a better deal, you  
23 are going to love it. And that better deal, it was better,  
24 was Supplement CC. The staple lowered to 1,200. And it  
25 included in this notion of fencing all the TWA pilots in St.

1 Louis, which not only kept them all in St. Louis corralled  
2 there but it kept American pilots out of St. Louis, which  
3 meant they couldn't bid there which was some sort of benefit  
4 for the TWA guys.

5 So on the strength of the TWA pilots doing nothing  
6 other than get Senator Bond to introduce some legislation,  
7 the American pilots lower the staple by 250, and offer this  
8 notion of a fence in St. Louis. That was done with just the  
9 leverage of maybe the senator's bill might get passed some  
10 day. That was the only leverage. That was all that had  
11 changed. What if ALPA had gotten involved and done any of  
12 the things, or all of the things, that were requested of it?  
13 Litigate, boycott. All of it. Would there have been a  
14 better deal? A more favorable deal? Again, that is up to  
15 you to decide. But again, you must use your common sense and  
16 look at what happened.

17 If you lower that staple by one pilot, that is  
18 injury.

19 Folks, I am finished. Okay. I am sure you have  
20 heard enough. And I am going to sit down now, and the Judge  
21 is going to read some instructions to you and we will see you  
22 when you get back.

23 THE COURT: Thank you, Mr. Press. We will take a  
24 short break now. About 15 minutes. It is 25 of 11. About  
25 ten of 11. Then I will read my charge of the law to you.

1 And then the case is yours. Don't discuss the case among  
2 yourselves until you have heard my charge. All rise.

3 (Jury leaves the courtroom)

4 THE COURT: Mr. Fram.

5 MR. FRAM: Two things. One, I did write out a  
6 proposed insert to deal with this with this issue of witness  
7 vouching, if I can hand it up. I indicated, your Honor,  
8 where I would request that the Court include it. It would be  
9 on page 10, is where I was suggesting.

10 THE COURT: Have they seen it?

11 MR. FRAM: No, they haven't, your Honor.

12 THE COURT: While they are looking at it, you have  
13 a second point.

14 MR. FRAM: I did, your Honor. I thought we talked  
15 about the advice in the charge that if you find by a  
16 preponderance of the evidence that ALPA breached, then you  
17 must. And the converse. I am looking, your Honor, at the  
18 bottom of page 18 of the charge.

19 THE COURT: Yes.

20 MR. FRAM: I thought that paragraph was going to  
21 move and be part of what you of this --

22 THE COURT: Page 19, not 18.

23 MR. FRAM: I am looking at the bottom of 18.

24 THE COURT: Look at 19.

25 MR. FRAM: 19 is what we discussed. I guess my

# **EXHIBIT 4**

Page 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE  
CIVIL ACTION NO. 02-2917 (JEI)

PATRICK BRADY, et al.,  
Plaintiffs,

vs.

AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL,  
Defendant.

-----  
January 29, 2013  
-----

Oral sworn videotaped deposition  
of RIKK SALAMAT, Case Lab, Inc., 288 Clinton Street,  
Toronto, Ontario, was taken at the law office of  
Archer & Greiner, 1650 Market Street, Philadelphia,  
Pennsylvania, before Jean B. Delaney, Certified  
Shorthand Reporter and Notary Public of the State of  
New Jersey, on the above date, commencing at 9:30  
a.m., there being present:

GREEN JACOBSON, P.C.  
BY: JOSEPH JACOBSON, ESQUIRE  
7333 Forsyth Boulevard  
St. Louis, Missouri 63105  
(314) 862-6800  
Attorneys for Plaintiff

TRUJILLO, RODRIGUEZ & RICHARDS, LLC  
BY: LISA RODRIGUEZ, ESQUIRE  
258 Kings Highway East  
Haddonfield, New Jersey 08033  
(856) 795-9002  
Attorneys for Plaintiff

Page 2

PAUL, WEISS, RIFKIND, WHARTON & GARRISON,  
LLP

BY: DANIEL J. TOAL, ESQUIRE  
JULIE ROMM, ESQUIRE

1285 Avenue of the Americas  
New York, New York 10019  
(212) 373-3869  
Attorneys for Defendant, ALPA

KATZ & RANZMAN, PC

BY: DANIEL M. KATZ, ESQUIRE  
4530 Wisconsin Avenue N.W., Suite 250  
Washington, D.C. 20016  
(202) 659-4656

Attorneys for Defendant, ALPA

Also present: James Bateman, CLVS  
Ricardo Cossa, Navigant Economics

Page 3

## I N D E X

Witness Page

RIKK SALAMAT  
By Mr. Toal 6

## E X H I B I T S

Marked for I.D. Page

Salamat-1 Damages in Brady, et al 13

versus the Air Line Pilots  
Association, dated October  
12, 2012

Salamat-2 Copy of Rule 26 of the Rules 14  
of Civil Procedure

Salamat-3 Supplementary Report on 23  
Damages Under the Farber  
Lists

Salamat-4 Document entitled 25  
Supplementary Report on  
Damages Under the Tannen  
List

Salamat-5 Preliminary Calculation of 26  
Mitigation of Damages in  
Brady et al versus the Air  
Line Pilot's Association

Salamat-6 Article entitled Persuasive 66

Page 4

Argumentation in Negotiation  
by Katia Sycara

Salamat-7 Deposition transcript from 218  
Don Carty

Salamat-8 Copy of testimony of Jeff 221  
Brundage

Salamat-9 Memo from Baptiste & Wilder, 248  
P.C. dated March 13, 2001

Salamat-10 August 6, 2001 memo from 256  
Clay Warner to Seth Rosen

1 A Well, you mean, the data -- like  
2 seniority lists being very closely related to the  
3 employment history and the agreement. There --  
4 there may have been some early versions of a  
5 proposed fence in some of the -- some of the  
6 proposals that had been passed back and forth  
7 between the parties. But in terms of the fence that  
8 was finally implemented, it was the agreement and  
9 the employment history.

10 Q So you referenced proposals that had  
11 been passed between the parties; correct?

12 A Yes.

13 Q Did you review proposals that were  
14 passed between the parties?

15 A I did.

16 Q And the proposal that you reviewed, are  
17 all of those reflected in your report?

18 A Yes.

19 Q And to the extent there is a proposal  
20 out there somewhere that's not cited in your report,  
21 can I assume that's something you didn't review?

22 A Well, I -- I -- I only had the  
23 proposals that I mentioned in the report. So there  
24 may have been others out there, but I only have the  
25 ones that I had.

1 Q And did you have any source of  
2 information on proposals that were communicated  
3 orally?

4 A No. Unless -- unless it was mentioned  
5 in Mike Day's testimony. But, you know, the  
6 proposals that I based most -- the proposals that I  
7 based my opinion on are the ones I had the text of  
8 or some recording of.

9 Q Did you make any assumptions in your  
10 report about the pre-transaction career expectations  
11 of the TWA pilots?

12 A No.

13 Q Did you make any assumptions in your  
14 report about the pre-transaction career expectations  
15 of the American Airlines pilots?

16 A No.

17 Q Did you make any assumptions in your  
18 report about the leverage that the TWA pilots had in  
19 negotiating with the APA?

20 A Well, I -- I think the whole report is  
21 about leverage that the TWA pilots could have had,  
22 so you would have to be a little more specific in  
23 your question.

24 Q My -- my question is whether you made  
25 any assumptions about the leverage that the TWA

1 pilots had.

2 A That they actually had given the  
3 circumstances?

4 Q Yes.

5 A I assume they had a small amount, but  
6 I -- I really -- I'm not sure. You would have to be  
7 much more specific about what type of leverage  
8 you -- you would be referring to, and maybe you  
9 could ask me the question in a different way. Maybe  
10 I'm just --

11 Q So I'm trying to understand -- I'm  
12 trying to differentiate circumstances in which you  
13 are offering an opinion or basing your -- your  
14 opinions on some piece of evidence.

15 A Uh-huh.

16 Q And so I'm -- I'm asking about  
17 assumptions that you made where you are just  
18 assuming facts to be a certain way.

19 A Uh-huh.

20 Q And so my question was, with respect to  
21 the leverage that the TWA pilots had in negotiating  
22 with the APA, did you make any assumptions about the  
23 amount of leverage they had in those negotiations?

24 A I made some assumptions about the  
25 amount of leverage that, for instance, the Bond bill

1 had on the negotiation.

2 Q And what assumptions did you make?

3 A My assumption was that by employing  
4 that leverage, they were able to compel or convince  
5 the APA to change their position. That, I believe,  
6 is the only assumption I made in regards to the TWA  
7 pilots and leverage that they had.

8 Q Did you make any assumptions about the  
9 leverage that the TWA pilots would have had, had  
10 ALPA conducted itself differently?

11 A I did.

12 Q And what assumptions did you make in  
13 that regard?

14 A I assumed they would have had more  
15 leverage.

16 Q Did you -- did you quantify the  
17 increased leverage that you thought they would have?

18 A Yes.

19 Q And how did you do that?

20 A I went through -- I employed a  
21 methodology for basically decomposing the effect  
22 that each additional point of leverage would have  
23 had on the probabilities of achieving certain  
24 outcomes. So, for instance, the list that I call  
25 the damage model, I estimated the extent at which

Page 57

1 each one of the points of leverage that ALPA could  
2 have brought to bear would have had on increasing  
3 the probability of that, meaning an outcome in  
4 negotiations.

5 Q So that the probabilities that you  
6 associate with each ALPA action, were those the  
7 product of an assumption?

8 A Yes, they were. They were the product  
9 of an assumption and the product of, you know,  
10 coming up with a -- a conservative value for the  
11 effect of each one of those actions.

12 Q And the probabilities that you  
13 associate with each of those actions by ALPA, was  
14 that something that was measured in any way?

15 A Yes.

16 Q And what did you do to measure the  
17 probability that those actions would have a certain  
18 affect?

19 A Well, what I did to measure the  
20 probability was to analyze each of the actions and  
21 -- as best as I could understand what the impact of  
22 those actions would have been on the negotiation  
23 process, in terms of, would it have been able to  
24 shift the APA's perception of an issue, their  
25 commitment to an issue, and so on. And then, for

Page 58

1 each one of those types of impacts that the action  
2 could have had on the negotiation, assigning a  
3 value, a percentage, you know, one, two, three  
4 percent probability that that particular action on  
5 its own would have produced.

6 Q And so my -- my question is, for each  
7 of those elements of your analysis, how did you know  
8 that the probability was 3 percent, versus  
9 .3 percent, versus 30 percent?

10 A Well, it was based largely on the  
11 experience of the Bond bill and the impact that it  
12 had on the negotiation.

13 Q And what did the Bond bill tell you  
14 about what the specific measurement of each -- each  
15 action was?

16 A Well, if I took the Bond bill at being  
17 one action and, you know, how it would have affected  
18 the negotiation a number of ways and it moved the  
19 APA's position a certain amount, I then went  
20 backward and said if that Bond bill could have done  
21 that, then if we assume a significantly smaller  
22 impact of these other actions, what would the  
23 outcome likely have been?

24 Q Did you have any other basis for -- for  
25 assigning those probabilities other than what you

Page 59

1 just described?

2 A Well, there was the basis -- there is  
3 the -- I -- I think the Bond bill was probably the  
4 most significant actual historical event that I had.

5 Q So -- and was there anything else?

6 A No.

7 Q Did you do anything to test whether  
8 your probabilities were accurate?

9 A Other than mathematically?

10 Q Yeah. When you said that this event  
11 has a 3 percent chance of influencing --

12 A Uh-huh.

13 Q -- perception, for example, did you do  
14 anything to test whether that was right?

15 A No. There -- there would be no way to  
16 test that.

17 Q Are you aware of any methodology that's  
18 generally accepted within your field of expertise  
19 that allows you to determine what those particular  
20 probabilities are in -- in any given situation?

21 A I'm -- I'm not aware of any.

22 Q Are you aware of the methodology that  
23 you used to try and quantify the likelihood of an  
24 agreement being reached being used at any time in  
25 the past?

Page 60

1 A Well, the article that I cited written  
2 by -- by I believe it was Katia Sycara, who has a  
3 computer model developed on -- developed to assess  
4 the impact of negotiation, has a framework that is  
5 used, that I actually adopted her framework for  
6 analyzing the impact of particular arguments on a  
7 negotiation, so that's --

8 Q Does Professor Sycara's framework  
9 involve attempting to quantify the likelihood of an  
10 agreement being reached under a particular set of  
11 circumstances?

12 A It does attempt to test whether  
13 particular arguments will be successful in reaching  
14 an agreement.

15 Q Could you answer my question?

16 A Okay. Well, can I ask you to ask your  
17 question again?

18 Q Sure. Does Professor Sycara's  
19 framework involve an effort to quantify the  
20 likelihood of an agreement being reached?

21 A Well, I believe her work could be read  
22 that way. I don't think it's what the model was  
23 designed to do, but, I mean, to the extent that it  
24 is attempting to assess the likelihood that a  
25 particular argument is likely to be persuasive --



Page 69

1 confirm your understanding about the use of the  
2 persuader model to evaluate the strength of  
3 arguments?

4 A No, I did not.

5 Q Do you know whether the hierarchy of  
6 arguments, according to their persuasive power, is  
7 an input to the model or an output of the model?

8 A Well, let's go through and look -- see  
9 what she says.

10 Q Can you state for the record which page  
11 you are reviewing?

12 A Right now I'm on 226.

13 And my understanding is that these arguments  
14 are all inputs into the model.

15 Q So if your -- your understanding is  
16 that these arguments are inputs to the model --

17 A Yeah.

18 Q -- do you have any basis for saying  
19 that one of the outputs or uses of the model is to  
20 evaluate the strength of arguments?

21 A I'm sorry. Could you -- could you  
22 repeat the question?

23 Q Yeah. So if your understanding is that  
24 the arguments are inputs to the model, do you have  
25 any basis for saying that one of the uses of the

Page 70

1 model is to evaluate the strengths -- the strength  
2 of arguments?

3 A I -- I believe that's what her software  
4 does.

5 Q As an output of the model?

6 A I believe that that would be an output  
7 of the model.

8 Q Did you do anything to confirm that  
9 understanding?

10 A No, I did not.

11 Q Did you use the persuader software  
12 model in connection with your work?

13 A No. I just used the framework that she  
14 outlined.

15 THE WITNESS: Would it be okay to take  
16 a break?

17 MS. RODRIGUEZ: Sure.

18 VIDEO SPECIALIST: The time is now  
19 10:54 and this ends this number one.

20 (Brief recess.)

21 VIDEO SPECIALIST: The time is now  
22 11:07 and we are back on the video record.

23 BY MR. TOAL:

24 Q Mr. Salamat, in your report do you make  
25 assumptions about the APA's willingness to make

Page 71

1 further compromises?

2 A Not their willingness, but their --  
3 their -- I make assumptions about what would happen  
4 given more pressure. You can never speak about  
5 anybody's willingness until they're in a situation  
6 where that will has expressed itself, so --

7 Q But you do make assumptions, if  
8 circumstances had been different, what the APA's  
9 willingness to make further concessions would have  
10 been; correct?

11 A That's correct.

12 MS. RODRIGUEZ: I'm sorry, can you read  
13 back that last question?

14 (The court reporter read back the  
15 pending question as follows:

16 "Question: But you do make  
17 assumptions, if circumstances had been  
18 different, what the APA's willingness to make  
19 further concessions would have been;  
20 correct?")

21 BY MR. TOAL:

22 Q And do you make assumptions in your  
23 report about how the APA would have responded to any  
24 of the proposed actions by ALPA that you list in  
25 your report?

Page 72

1 A I -- I assume they would have  
2 responded.

3 Q And in what manner do you assume they  
4 would respond?

5 A I assume that given more pressure, that  
6 they would have responded in a way that was more  
7 fair.

8 Q To whom?

9 A To the TWA pilots.

10 Q And so when you say more fair, you mean  
11 more favorable to the TWA pilots; correct?

12 A I mean more fair and more favorable to  
13 the TWA pilots, yes.

14 Q And do you consider yourself an expert  
15 on fairness?

16 A I do not consider myself an expert on  
17 fairness. I do consider myself an expert on, you  
18 know, assessing whether particular seniority  
19 integrations are more or less fair to a particular  
20 group.

21 Q And by virtue of what experience do you  
22 have expertise on evaluating whether a particular  
23 seniority integration is fair to a particular group?

24 A I spent the last twelve years analyzing  
25 seniority integrations and their impact on various



Page 73

1 groups.

2 Q And what criteria do you use to assess  
3 whether a seniority integration is fair?

4 A A variety. Whether one group is able  
5 to access the work that it brought to the merger is  
6 a common one. Whether people are able to keep their  
7 jobs is generally the measure. Everything else  
8 being some form of variation of that.

9 Q Have you seen in your work that, in  
10 evaluating the fairness of seniority integration  
11 lists that people look to, whether the integrated  
12 list preserves the pre-transaction career  
13 expectations of each pilot group?

14 A That -- that would be common in -- in  
15 mergers that people do that, yes.

16 Q And is that one of the criteria you  
17 look to in assessing whether a seniority integration  
18 list is fair?

19 A Not in this particular case, no.

20 Q Why not in this particular case?

21 A Because in this case, we weren't  
22 looking at what people's premerger expectations  
23 were.

24 Q Why not?

25 A Because we were looking at what the

Page 74

1 impact would have been under different lists at  
2 American Airlines, a merged carrier, and not what  
3 expectations they necessarily had going into the  
4 merger. The only thing we looked at in terms of  
5 that was what number of jobs they had going into the  
6 merger. We didn't do any forecasts on -- on what  
7 would have happened had there not been a merger.  
8 That's what you would typically do in a -- in a  
9 seniority arbitration.

10 Q And did you not think that criteria was  
11 relevant in this particular case?

12 A What the TWA pilots' un-merged career  
13 expectations would have been?

14 Q Pre-transaction career expectations of  
15 each pilot group.

16 A I didn't see how that would be  
17 particularly relevant here.

18 Q Why -- why didn't you think that would  
19 be relevant here but relevant in other situations?

20 A Well, because here the merger is a  
21 given. In other situations, not necessarily.

22 Q What do you mean by that?

23 A Well, in this case the two carriers did  
24 merge. They were merged under a particular  
25 seniority integration, and so the exercise was to go

Page 75

1 back and look and see what the history would have  
2 been under a different seniority integration.

3 Q Isn't it the case in any airline  
4 combination that the airline pilots will be combined  
5 and the question is what their pre-transaction  
6 career expectations were?

7 MS. RODRIGUEZ: Objection.

8 THE WITNESS: If you are arguing, you  
9 know, what a seniority integration should be, you  
10 might. But I wasn't arguing what a seniority  
11 integration should have been. I wasn't arguing what  
12 seniority integration would have been fair. I have  
13 only argued, you know, I have only estimated what a  
14 seniority integration that would have been income  
15 optimal would have been, what I believe would have  
16 been likely under other -- other sets of  
17 circumstances.

18 BY MR. TOAL:

19 Q I'm sorry. You say you estimated what  
20 a seniority integration would have been if it was  
21 income optimal? Is that what your testimony --

22 A If it was income optimal.

23 Q That's what you were estimating here?

24 A I'm sorry?

25 Q Is that what you were estimating here?

Page 76

1 A One of the things that I estimated  
2 here.

3 Q And which list reflects a list that  
4 would have been income optimal?

5 A I believe it is called the I optimal  
6 list. It might have also been referred to as the  
7 fairness list.

8 Q And what does the Salamat list  
9 represent?

10 A The Salamat list represents my best  
11 estimate at what list would have been achieved in  
12 negotiation had ALPA deployed all of the strategies  
13 that it had available to it would have been.

14 Q And you made that determination without  
15 assessing the negotiating position of the APA; is  
16 that correct?

17 A Well, I -- I don't believe I said that,  
18 but --

19 Q Well, that's my question. Did you make  
20 that assessment -- did you take into consideration  
21 the negotiating position of the APA when developing  
22 the Salamat list?

23 A I did.

24 Q In what ways did you take into  
25 consideration the negotiating position of the APA?

Page 77

1 A The proposals that they had passed, the  
2 response to the TWA's pilots proposal.

3 Q And other than that, did you take into  
4 consideration any other information concerning the  
5 APA's position?

6 A I think those would be the main things  
7 I relied on. There -- there was also, you know,  
8 characterizations of the APA in their negotiating  
9 position that was made in -- in closing arguments in  
10 the -- the trial.

11 Q Anything other than that?

12 A No. Just generally the record.

13 Q And what characterizations of the APA  
14 were you -- were you referring to that were made in  
15 closing arguments?

16 A Peter Fram talked about how difficult  
17 it was to negotiate with the APA from the point of  
18 view of the CEO of American Airlines, Compton, I  
19 believe.

20 In Mike Day's testimony, he talked about how  
21 they wouldn't respond to proposals that they had  
22 made and were disinclined to negotiate in any  
23 meaningful way during their facilitated  
24 negotiations.

25 Q And are you aware of any -- withdrawn.

Page 78

1 Did you rely on any information about what the  
2 APA would have done had ALPA taken any of the  
3 actions that you describe in your report?

4 A I don't know what information I could  
5 have relied on because ALPA didn't take those  
6 actions.

7 Q And did you have any information on  
8 what ALPA would have done or what they said they  
9 would have done had any of these actions been taken?

10 MS. RODRIGUEZ: Objection to form.  
11 ALPA?

12 BY MR. TOAL:

13 Q I'm sorry. Did you have any  
14 information on what the APA would have done or what  
15 they said they would have done had any of the ALPA  
16 actions that you describe in your report been taken?

17 MS. RODRIGUEZ: Objection.

18 THE WITNESS: I -- I don't recall  
19 coming across any information saying what the APA  
20 would have or would not have done given any specific  
21 action by ALPA.

22 BY MR. TOAL:

23 Q So -- so is the answer to my question  
24 that you didn't have any such information?

25 A I don't believe I had any such

Page 79

1 information.

2 Q Did you make any assumptions in your  
3 report about the likelihood that American Airlines  
4 would decide to walk away from the proposed  
5 transaction with TWA?

6 A The likelihood that American Airlines  
7 would have walked away from the -- no. I don't  
8 believe I made any assumptions about that.

9 Q Did you have any information about the  
10 APA's view about TWA's financial condition at the  
11 time of the transaction?

12 A Yes.

13 Q And what information did you have?

14 A In their response to the TWA's rightful  
15 place proposal, they characterized TWA's financial  
16 position as -- as dismal at best.

17 Q And did you have any information about  
18 the APA's view of the pre-transaction career  
19 expectations of the TWA's pilots?

20 A I believe they didn't believe them to  
21 be particularly desirable.

22 Q Do you have an understanding that the  
23 APA believed the TWA pilots to have poor career  
24 expectations prior to the transaction?

25 A Yes.

Page 80

1 Q Did you have any information suggesting  
2 to you that one of the factors the APA was relying  
3 upon in proposing seniority integration was what the  
4 pre--- pre-transaction expectations of each pilot  
5 group were?

6 A Yes.

7 Q Did you have an understanding that the  
8 TWA MEC was also, in its proposals, relying on its  
9 views of what the pre-transaction career  
10 expectations of both pilot groups were?

11 MS. RODRIGUEZ: Objection.

12 THE WITNESS: I don't believe I've seen  
13 any comprehensive document where -- where the TWA  
14 MEC characterized the financial condition of -- of  
15 TWA.

16 BY MR. TOAL:

17 Q Are you aware of any information  
18 suggesting that the TWA MEC agreed that any  
19 integrated list should preserve the pre-transaction  
20 career expectations of each pilot group?

21 A Well, to the -- to the extent that the  
22 MEC's point of view is reflected in the Tannen  
23 proposal, I assume they believed they had premerger  
24 career expectations. But other than in that form, I  
25 don't -- I don't know that I've seen any documents

Page 81

1 that say what the MEC thought the future without an  
2 American Airlines merger would have been.

3 Q But I'm not asking you what the TWA MEC  
4 thought TWA's financial condition was. I'm asking  
5 whether you have any information indicating to you  
6 that the TWA MEC believed it was appropriate to take  
7 into account the pre-transaction career expectations  
8 of each pilot group in constructing a merged  
9 seniority list.

10 A To the extent that that is reflected in  
11 the Tannen rightful place proposal, I believe it is.

12 Q Did you do anything to test whether the  
13 lists that you set forth in your report succeed in  
14 preserving the pre-transaction career expectations  
15 of each pilot group?

16 A No, I did no work on the premerger  
17 trans -- the un-merged expectations of either of  
18 the pilot groups.

19 Q And you considered that factor  
20 irrelevant for your analysis; correct?

21 A Yes. I considered it irrelevant.

22 Q And the reason you considered it  
23 irrelevant was because it was a given at -- at that  
24 stage that there was going to be a transaction; is  
25 that right?

Page 82

1 A What I took as a given was how many  
2 positions each pilot had at the point when the two  
3 airlines were merged. Whether they would have  
4 had -- the way in which we analyze premerger  
5 expectations is to assume that the future is going  
6 to remain more or less the same as it is at the  
7 point the two airlines are merged, and so I could  
8 theoretically have compared TWA's premerger  
9 expectations to their career under American Airlines  
10 Supplement CC list, but I didn't really see that  
11 that would tell us anything because I wasn't  
12 comparing their careers at American to their careers  
13 at a stand-alone-TWA, or a TWA merged with another  
14 airline, or a TWA under a different management.

15 Q So what I was trying to understand  
16 is --

17 MS. RODRIGUEZ: Again, I'm going to ask  
18 you -- he was not finished. You -- you step on his  
19 last words.

20 MR. TOAL: He paused. He threw me off.  
21 So were you done with your answer?

22 THE WITNESS: Let's just go on, yeah.

23 BY MR. TOAL:

24 Q I was trying to understand why you  
25 seemed to acknowledge that consideration of

Page 83

1 pre-transaction career expectations is relevant in  
2 other cases and why you regarded it as irrelevant in  
3 this case, and I thought you testified previously  
4 that in this case the merger was a foregone  
5 conclusion. Was that your testimony?

6 A Well, in this case we were looking at  
7 the pilots' seniority under a given merger versus  
8 what their -- what -- what their careers would have  
9 been under a different seniority list in the same  
10 merger, not in an un-merged or a premerger airline  
11 would have been, so --

12 Q How does that differentiate this case  
13 from any other case in which arbitrators or others  
14 take into account the pre-transaction career  
15 expectations of each pilot group?

16 A How does -- how does this case differ?

17 Q How does that aspect of this case that  
18 you regarded a transaction as being a foregone  
19 conclusion at the time they were discussing  
20 seniority integration, how does that differentiate  
21 it from any other case in which pre-transaction  
22 expectations of the pilot groups are taken into  
23 consideration?

24 A Well, perhaps I misspoke when I said  
25 that earlier because, I mean, I don't think that it

Page 84

1 does actually differentiate this case from the  
2 others. What it differentiates is more of a  
3 comparing. In those other cases, you know, where --  
4 where, for instance, I'm working with a -- with a  
5 group that's going into a seniority arbitration, we  
6 are comparing what their career under the merged  
7 carrier will be to what their standalone career  
8 expectations were. So to the extent that they  
9 brought X number of jobs with them, are they able to  
10 continue to have access to those jobs under this  
11 list in this merged airline? That's not the  
12 analysis that I'm doing in this case. I'm not  
13 comparing what -- whether their careers at American  
14 are superior to or inferior to the careers that they  
15 would have had at TWA as a standalone entity.

16 That's -- that's -- because I'm -- I'm -- we  
17 wouldn't be arguing at an arbitration about what we  
18 think the seniority integration should be.

19 Q One of the things you are doing is  
20 trying to assess whether the APA would have been  
21 willing, under different circumstances, to make  
22 additional concessions; correct?

23 A That's correct.

24 Q And you knew that the APA regarded the  
25 pre-transaction career expectations as -- as a

Page 85

1 factor in determining what seniority integration  
2 would be appropriate; correct?

3 A In every merger there is one group that  
4 thinks the other groups has dismal career  
5 expectations.

6 Q So why would you regard the  
7 pre-transaction career expectations of the pilot  
8 groups as irrelevant when it was one of the factors  
9 that the APA was taking into consideration?

10 A Because at the end of the day the  
11 premerger career expectations of pilots matters to  
12 the extent that they brought X number of jobs with  
13 them and not typically where -- what may or may not  
14 happen with, you know, the company absent the  
15 merger. That stuff is argued. In my experience, it  
16 doesn't play any significant role in the outcome of  
17 seniority integrations.

18 Q And that's based on what experience?

19 A Well, that's based on a review of the  
20 seniority awards going back some years.

21 Q And you haven't seen seniority awards  
22 in which the arbitrators analyze the pre-transaction  
23 career expectations of the pilot groups on -- on a  
24 standalone basis?

25 A They do discuss it, certainly.

Page 86

1 Q Have you seen situations in which  
2 arbitrators say that's the predominant factor in  
3 evaluating a seniority arbitration?

4 A In arbitrations where you are dealing  
5 with a liquidated carrier, not a liquidated carrier,  
6 but a carrier that ceased to function, I've seen  
7 that.

8 Q Have you seen it in other situations?

9 A Where a particular amount of weight was  
10 placed on what? You would have to be more specific.

11 Q On the pre-transaction career  
12 expectations of each pilot group.

13 A Well, they are always based on the  
14 premerger -- premerger career expectations in some  
15 manner.

16 Q How -- how do you define  
17 pre-transaction career expectations? What's  
18 included in that assessment?

19 A The amount of work that the pilot group  
20 brought to the merger, how old that pilot group is,  
21 whether the airline had been growing or shrinking,  
22 whether it had aircraft orders.

23 Q Anything else?

24 A The financial health of the company.

25 Whether the -- whether the company was in or out of

Page 87

1 bankruptcy. Whether it was or was not operating.

2 Q Anything else?

3 A I think those would be the most common  
4 ones.

5 Q What about the -- the equipment that  
6 each airline operated?

7 A Well, when I said the job that they  
8 brought to the merger, that's what I mean.

9 Q And what do you know about TWA's  
10 financial condition at the time of the American  
11 Airline transaction?

12 A They were in bankruptcy. It was not  
13 healthy. But as I said, I didn't -- I did not  
14 investigate or analyze their financial situation.

15 Q Is that something you have the  
16 expertise to do?

17 A To assess their financial situation?

18 Q Yes.

19 A No.

20 Q Did you undertake any analysis of the  
21 equipment that TWA was operating prior to the time  
22 of the transaction?

23 A Other than to see how many positions  
24 they had on different pieces of equipment, no. I  
25 don't know anything about, you know, the age or make

Page 88

1 of -- of, you know, the particular aircraft they  
2 were flying.

3 Q Did you do anything to undertake an  
4 analysis of the number of pilot jobs that TWA would  
5 be bringing to a merged entity?

6 A Some.

7 Q What did you do in that regard?

8 A I looked at how many pilot positions on  
9 those -- those pieces of equipment were left as of,  
10 I guess, 18 months after the merger.

11 Q Did you do anything else?

12 A No.

13 Q Did you undertake any analysis of TWA's  
14 viability as a going concern on a standalone basis?

15 A No, I did not.

16 Q Is that something that would be  
17 relevant to the pre-transaction career expectations  
18 of the TWA pilots?

19 A No. To the extent that they were still  
20 operating as of the merger, no.

21 Q What about if they were expected to  
22 stop operating within a matter of months? Would  
23 that affect their pre-transaction career  
24 expectations?

25 A Not in my opinion, no.



Page 209

1 what -- why that movement occurred, and Sycara's  
2 model was helpful for at least breaking down each  
3 action into individual components, and then  
4 estimating what each one of these actions would have  
5 had on each one of those components.

6 Q Well, these numbers reflect your  
7 subjective judgments about probabilities; correct?

8 A They do.

9 Q And when I asked you if there is any  
10 scientific methodology that you used to arrive at  
11 these numbers, there was no scientific methodology  
12 that you used to arrive at any of these numbers;  
13 correct?

14 A No empirical scientific methodology. I  
15 mean, the assumption of rationality and the reason  
16 why you would assign a probability to these outcomes  
17 all, of course, is a -- is simple probabilities,  
18 basic math. So you can't say no. But is there -- I  
19 mean, unfortunately there isn't any specific branch  
20 of science that I'm aware of that would illuminate  
21 this area meaningfully, so --

22 Q Nor is there a branch of economics that  
23 would illuminate this area; correct?

24 A I don't believe there is, as being a  
25 very specific situation.

Page 210

1 Q And you are not an -- you are not an  
2 economist, are you?

3 A I'm not -- I would not call myself an  
4 economist, no.

5 Q I was a bit confused by one of your  
6 prior answers where you -- I thought you first said  
7 you were looking at, in coming up with your  
8 probabilities, other arbitrations. And then, later  
9 in your answer I thought you changed your answer to  
10 say you were actually looking at what happened with  
11 respect to this particular transaction. Which of  
12 those were you looking at?

13 A I'm -- I'm not sure which question you  
14 are talking about. Let's take the first one. What  
15 was the question?

16 Q With respect to these probabilities,  
17 were you trying to derive them based on what  
18 happened in this particular negotiation or in other  
19 arbitrations?

20 A Both.

21 Q Now, you talked about the APA movements  
22 with regard to the Bond legislation. Do you recall  
23 that testimony?

24 A Uh-huh.

25 Q What analysis did you undertake to try

Page 211

1 and assess what, if any, movements the APA made with  
2 respect to its proposals as a result of the Bond  
3 legislation?

4 A Based on the difference of the  
5 composition of the two lists as it existed before  
6 and after.

7 Q And what did you do to try and assess  
8 whether any movement was caused by the Bond  
9 legislation?

10 A Well, there was movement over that  
11 period of time. The assumption I made was that it  
12 was the result of the Bond legislation. My  
13 understanding of the -- of the record was that it  
14 was actually surely -- it was surely after a meeting  
15 with Senator Bond that a new proposal from the APA  
16 was presented and that a communication from Bond's  
17 office to the TWA pilots was that the APA pilots had  
18 a new proposal and that they were going to be  
19 pleased, I believe, was how it was put. And so,  
20 given that it was based on all of the meetings  
21 around the Bond legislation, my assumption is that  
22 the two were connected and could, in theory, I  
23 suppose, be a complete coincidence, but that doesn't  
24 seem very reasonable.

25 Q So that's an assumption that you made

Page 212

1 that movements during that period were caused by the  
2 Bond legislation?

3 A I think any reasonable person would  
4 conclude that.

5 Q Well, whether that's the case or not,  
6 that's the assumption you made; correct?

7 A That's correct.

8 Q Other than that assumption, do you have  
9 any other basis for concluding that any movements  
10 during this period were caused by the Bond  
11 legislation?

12 A No.

13 Q Do you have any information concerning  
14 the APA's views about the likelihood that the Bond  
15 legislation would become law?

16 A I'm sorry. Can I -- can I just get you  
17 to -- do I have any --

18 Q Do you have any information about what  
19 the APA's views were about the likelihood that the  
20 Bond legislation would -- would become law?

21 A I -- I don't believe I have any  
22 information about their views on that.

23 THE WITNESS: Can we take a short break  
24 here?

25 MR. TOAL: Sure.

# **EXHIBIT 5**

Page 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE  
CIVIL ACTION NO. 02-2917 (JEI)

PATRICK BRADY, et al.,  
Plaintiffs,

vs.

AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL,  
Defendant.

-----  
January 30, 2013  
-----

Oral sworn continued videotaped  
deposition of RIKK SALAMAT, Case Lab, Inc., 288  
Clinton Street, Toronto, Ontario, was taken at the  
law office of Archer & Greiner, 1650 Market Street,  
Philadelphia, Pennsylvania, before Jean B. Delaney,  
Certified Shorthand Reporter and Notary Public of  
the State of New Jersey, on the above date,  
commencing at 9:30 a.m., there being present:

GREEN JACOBSON, P.C.  
BY: JOSEPH JACOBSON, ESQUIRE  
7333 Forsyth Boulevard  
St. Louis, Missouri 63105  
(314) 862-6800  
Attorneys for Plaintiff  
TRUJILLO, RODRIGUEZ & RICHARDS, LLC  
BY: LISA RODRIGUEZ, ESQUIRE  
258 Kings Highway East  
Haddonfield, New Jersey 08033  
(856) 795-9002  
Attorneys for Plaintiff

Page 2

PAUL, WEISS, RIFKIND, WHARTON & GARRISON,  
LLP

BY: DANIEL J. TOAL, ESQUIRE  
JULIE ROMM, ESQUIRE

1285 Avenue of the Americas  
New York, New York 10019  
(212) 373-3869

Attorneys for Defendant, ALPA

KATZ & RANZMAN, PC

BY: DANIEL M. KATZ, ESQUIRE

4530 Wisconsin Avenue N.W., Suite 250  
Washington, D.C. 20016

(202) 659-4656

Attorneys for Defendant, ALPA

Also present: James Bateman, CLVS  
Ricardo Cossa, Navigant Economics

Page 3

I N D E X

Witness Page

RIKK SALAMAT

By Mr. Toal 4

E X H I B I T S

Marked for I.D. Page

Salamat-11 Portion of deposition 20

transcript of Clay Warner

Salamat-12 Excerpt from the ALPA 38

administrative policies

Salamat-13 Supplement CC 178

Salamat-14 Deposition transcript of 188

John Darrah

Salamat-15 Arbitration decision of 231

George Nicolau

Page 4

VIDEO SPECIALIST: The time is now 9:30  
and we are back on the record. Would the court  
reporter please swear in the witness.

RIKK SALAMAT, having been duly sworn,  
was examined and testified as follows:

BY MR. TOAL:

Q Good morning, Mr. Salamat.

A Good morning.

Q Do you have your report in front of  
you?

A No, I don't. Okay.

Q So if you go back to figure one on page  
two of your report --

A Yes.

Q -- the -- the third action that you  
list that you say ALPA had available to it is  
something you describe as denied July 2001 legal  
strategy. Sue American and APA.

Do you see that?

A I do.

Q What's your understanding of what that  
legal strategy was?

A My understanding was that that was a  
strategy to bring a suit to compel American and APA  
to have a fair integration process.

Page 93

1 pilots were preserved by any of your lists; is that  
2 correct?

3 A That's correct.

4 Q Now --

5 A But you can estimate it using the  
6 fairness model.

7 Q Now, directing your attention back to  
8 page 223 of Sycara's article --

9 A Yes.

10 Q -- you see the second type of argument,  
11 strategy that she identifies as potentially  
12 accomplishing the first goal of changing the  
13 importance of an issue is indicating a change in the  
14 feasibility of the proposed goal?

15 A Yes.

16 Q Which of the strategies that you lay  
17 out in your report that you say ALPA had available  
18 to it were intended to indicate a change in the  
19 feasibility of a proposed goal of the APA?

20 A Well, if the proposed goal was to  
21 staple X number of pilots, bringing additional  
22 pressure and increasing the risk that the  
23 negotiation could be taken out of their hands or  
24 that others could be brought into the negotiation  
25 would have to change the feasibility of that goal of

Page 94

1 stapling that number of pilots.

2 Q So for purposes of (B), are you  
3 identifying the proposed goal as stapling TWA  
4 pilots?

5 A If that was a proposal -- yes.

6 Q Do you know if that was a goal of the  
7 APA, to staple TWA pilots?

8 A I believe it was -- it was derivative  
9 to their goal, which was to make a merged seniority  
10 list, and that some number of TWA pilots were going  
11 to be at the bottom of the list as a -- as a result  
12 of their -- their thinking about how to build the  
13 list. I don't know if that was actually their goal.

14 Q And which -- which of the ALPA actions  
15 do you believe changed the feasibility of whatever  
16 proposed goal you are identifying here?

17 A I believe they would have all changed  
18 the feasibility of that -- the proposed goal.

19 Q So if you look at page 224 of Sycara's  
20 article, first full paragraph, you see it says, the  
21 second argumentation goal that a persuader might  
22 select is to change the persuadee's assessment of  
23 the proposed value of an issue.

24 A Yes.

25 Q The second goal can be affected by

Page 95

1 using the following strategies. (C), recall a  
2 counterexample from persuadee's past behavior.

3 Are any of the strategies that you identified  
4 that ALPA had available to it intended to identify a  
5 counterexample from APA's past behavior?

6 A I -- I -- I don't think they would have  
7 led to that direct result, no.

8 Q And (D) says, recall examples of  
9 similar peers that have accepted the same value for  
10 the issue.

11 Are any of the ALPA strategies that you  
12 identify intended to recall examples from APA peers  
13 that have accepted the same value for the issue?

14 A Well, to the extent that all of those  
15 strategies would have intensified the negotiation  
16 and would have brought into the negotiation what  
17 happens in other mergers, all of those precedents  
18 are now there. And so, how other units have behaved  
19 toward other pilots would certainly have done that.

20 Q Well, how does -- how does the denied  
21 April 2001 legal strategy of delaying purchase  
22 relate to bringing in examples of similar peers that  
23 have accepted the same value for the issue?

24 A I don't know that it necessarily would  
25 have directly, but we are assuming that that action

Page 96

1 would be one of the ones that would have contributed  
2 to a better seniority outcome. One of the ways that  
3 a better seniority outcome is going to be achieved  
4 is by the APA having to consider what's been looked  
5 at as fair and -- in other -- in other mergers. And  
6 so, this is why I talk about, you know, a more  
7 intensive negotiation being an education process.  
8 If what you are proposing isn't being considered  
9 fair, then, you know, you were forced to consider  
10 what is thought of fair in other mergers. So I -- I  
11 would say that pretty much any action would -- that  
12 would intensify the negotiation would result to (D)  
13 in some way or another.

14 Q Are you aware of any instance in the  
15 negotiating history between the TWA MEC and the APA  
16 where either of the parties referenced the results  
17 of prior seniority integrations?

18 A I'm sure they must have, but I'm not  
19 aware.

20 Q Do you have any knowledge as you sit  
21 here today that that happened?

22 A That they looked at the circumstances  
23 of any particular merger?

24 Q Yes.

25 A No, I'm not aware that they did that.



# **EXHIBIT 6**

Page 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE  
CIVIL ACTION NO. 02-2917 (JEI)

PATRICK BRADY, et al.,  
Plaintiffs,

vs.

AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL,  
Defendant.

-----  
January 31, 2013  
-----

Continued oral sworn videotaped  
deposition of RIKK SALAMAT, Case Lab, Inc., 288  
Clinton Street, Toronto, Ontario, was taken at the  
law office of Archer & Greiner, 1650 Market Street,  
Philadelphia, Pennsylvania, before Jean B. Delaney,  
Certified Shorthand Reporter and Notary Public of  
the State of New Jersey, on the above date,  
commencing at 9:36 a.m., there being present:

GREEN JACOBSON, P.C.  
BY: JOSEPH JACOBSON, ESQUIRE  
7333 Forsyth Boulevard  
St. Louis, Missouri 63105  
(314) 862-6800  
Attorneys for Plaintiff  
TRUJILLO, RODRIGUEZ & RICHARDS, LLC  
BY: LISA RODRIGUEZ, ESQUIRE  
258 Kings Highway East  
Haddonfield, New Jersey 08033  
(856) 795-9002  
Attorneys for Plaintiff

Page 2

PAUL, WEISS, RIFKIND, WHARTON & GARRISON,  
LLP

BY: DANIEL J. TOAL, ESQUIRE  
JULIE ROMM, ESQUIRE

1285 Avenue of the Americas  
New York, New York 10019  
(212) 373-3869

Attorneys for Defendant, ALPA

KATZ & RANZMAN, PC

BY: DANIEL M. KATZ, ESQUIRE

4530 Wisconsin Avenue N.W., Suite 250  
Washington, D.C. 20016  
(202) 659-4656

Attorneys for Defendant, ALPA

Also present: Phil Roller, CLVS  
Ricardo Cossa, Navigant Economics

Page 3

# INDEX

Witness Page

RIKK SALAMAT

By Mr. Toal 4

## EXHIBITS

Marked for I.D. Page

Salamat-16 Copy of a document entitled 24

Preliminary Calculation of

Mitigation of Damages

Revised, dated January 30,  
2013

Salamat-17 TWA pilot seniority 56

integration summary of

Supplement CC from APA's

mergers and acquisitions

committee dated December

14, 2001

Page 4

VIDEO SPECIALIST: We are back on the  
video record. The time is 9:36. Would the court  
reporter, Jean Delaney, please swear in the witness?

RIKK SALAMAT, having been duly sworn,  
was examined and testified as follows:

BY MR. TOAL:

Q Good morning, Mr. Salamat.

A Good morning.

Q Mr. Salamat, one of the models you  
present in your report is what you call an  
arbitration model; correct?

A That's correct.

Q Take a look at page 14 of your report.

A I have it.

Q Okay. You see the second to last  
paragraph on the page. You say, the second outcome,  
referring to the arbitration, model is a best guess  
as to what an arbitrator would have awarded given  
the facts of the case; correct?

A That's what I said.

Q And was that accurate?

A I think best guess is probably not the  
best choice of words to be used there. I mean, it's  
not really a guess. It is an estimation based on,  
you know, the awards that have -- that were also

Page 5

1 mentioned in -- in the report, and my experience in  
2 the arbitrations that I was involved in. So best  
3 guess is -- probably mischaracterizes my attempt to  
4 estimate what the arbitrated list would be.

5 Q How did you decide the arbitrations  
6 that you would include in your analysis?

7 A I included every arbitration I had  
8 access to or every decision that I had access to  
9 post-deregulation.

10 Q Did -- did you review every arbitration  
11 decision?

12 A Every one that I knew of and that I had  
13 an award for. There were -- I -- I believe I  
14 mention in here there may have been arbitration  
15 awards between less than major carriers that I was  
16 unaware of. But from the library awards I have,  
17 which I -- I believe to be comprehensive, I reviewed  
18 all of them.

19 Q So with respect to the list set forth  
20 in figure eight of your report, in each of those  
21 cases where you -- you indicate there is an  
22 arbitrator, did you review each and every one of  
23 those awards as part of your analysis?

24 A I did review them.

25 Q And did you read those --

Page 6

1 A I'm sorry, you are on page --

2 Q It is on page 21.

3 A Oh, 21. Yes.

4 Q And did you read the arbitration  
5 reports for each of those matters in their entirety?

6 MR. JACOBSON: Object to the form of  
7 the question. Refers to arbitration reports.

8 THE WITNESS: I did -- to say I read  
9 them in their entirety would probably overstate the  
10 -- the case. I reviewed them looking for specifics  
11 about the condition of the -- the un-merged  
12 carriers, how the list was constructed, and anything  
13 that in -- in the arbitrator's decision was stated  
14 as -- as relevant to how they had put the list  
15 together. But some of the awards are quite  
16 extensive and go through, you know, the history of  
17 the carriers, and I didn't review those in any great  
18 detail.

19 BY MR. TOAL:

20 Q So when I asked if you reviewed each of  
21 those awards in their entirety, the answer is no;  
22 correct?

23 A The answer would be no.

24 Q And if you didn't review those awards  
25 in their entirety, how did you -- how did you

Page 7

1 determine which transactions would be comparable to  
2 the transaction between American Airlines and TWA?

3 A Well, I -- I don't know that there is a  
4 succinct answer to that. I mean, could you ask me  
5 the question again?

6 I'm sorry, the building that I was in last  
7 night was just swaying at 1:00 in the morning and  
8 woke me up, so I haven't had the greatest night's  
9 sleep, so I'm not as sharp today as I would like to  
10 be.

11 Q The question is, if you didn't review  
12 the arbitration awards in their entirety, how did  
13 you determine which of the transactions discussed in  
14 the awards were comparable to the transaction  
15 between American Airlines and TWA?

16 A Well, I reviewed the awards to the  
17 extent that I could understand what the -- what the  
18 state of the carriers prior to the transaction was.  
19 The things that I was looking for was what was the  
20 financial state of both of the carriers that went  
21 into the merger, what type of equipment the carriers  
22 were operating, what the difference in the types of  
23 equipment the carriers were operating were, the  
24 length of service, if any mention was made of it --  
25 of the two carriers. You know, anything that would

Page 8

1 characterize the -- the two contributing pilot  
2 groups that went into the merger I reviewed.

3 Some of that stuff, you know, things such as  
4 the operating history of the airlines, and, you  
5 know, it is not infrequent that an award will say  
6 Airline X was started in 1912 as a -- as a -- as a  
7 bush pilot operation. Over the following years --  
8 and so -- much of that stuff I did not spend any  
9 time reviewing. I was concerned with the state of  
10 the carriers at the point of the merger, and I  
11 believe I reviewed all of the awards sufficiently to  
12 understand that.

13 Q And why did you -- why were you  
14 concerned with the financial state of the carriers  
15 at the time of the transaction?

16 A Because that's what most -- that is  
17 what's most relevant in how the awards are -- are  
18 fashioned. So whether one started as a bush airline  
19 has -- has yet to be mentioned as a significant  
20 factor in any award.

21 Q Did you have any objective criteria for  
22 determining whether a transaction was the subject of  
23 an arbitration decision was comparable to the  
24 American Airline/TWA transaction?

25 A Did I have a criteria for analyzing the

Page 9

1 comparability of -- of other mergers to this one?

2 Q The question is if you had an objective  
3 criteria.

4 A Yeah. The objective criteria was, were  
5 the airlines operating at the time of the merger and  
6 was one in financial distress, were the two key  
7 criteria that I looked for.

8 Q And what metric did you use to  
9 determine if a carrier were in some financial  
10 distress at the time of the transaction?

11 A Whether the arbitrator mentioned that  
12 one carrier was in financial distress of some sort.  
13 Either -- most particularly, were they in  
14 bankruptcy. I mean, other -- some awards mentioned  
15 that, for instance, Canadian Airlines was heading  
16 towards bankruptcy but was not in bankruptcy and the  
17 arbitrator made mention of that in the award, so --

18 Q Did you do any independent analysis to  
19 try to determine the financial condition of the  
20 carriers at the time of the transaction?

21 A I did not.

22 Q And did you do any independent analysis  
23 to try to determine if either of the carriers was in  
24 financial distress at the time of the transaction?

25 A No. I relied entirely on the

Page 10

1 arbitrator's report -- award.

2 Q And do you have any expertise in  
3 predicting the results of arbitration decisions?

4 A Do I have any expertise? I would say I  
5 am more experienced in -- in estimating that than --  
6 than many. I don't know how you would actually  
7 qualify someone as an expert in estimating the  
8 outcome. I've been involved in several. I've  
9 worked with several arbitrators to construct their  
10 awards. So I would say I have significantly more  
11 expertise than your average person. But, again, I  
12 don't know what the objective criteria for -- for  
13 qualifying someone as an expert in estimating  
14 seniority awards would be.

15 Q And you said yesterday that you had  
16 been involved in I believe three arbitrations  
17 involving pilot seniority integration disputes;  
18 correct?

19 A Directly involved in the -- in the  
20 seniority arbitration, that's correct.

21 Q Have you been indirectly involved in  
22 others?

23 A Yes.

24 Q In which others?

25 A Air Canada/the connectors. I was

Page 11

1 involved in the class action suit arising from the  
2 non-seniority integration of the connector pilots to  
3 Air Canada. I was indirectly involved in -- well,  
4 there was this case which, of course, I'm indirectly  
5 involved in the seniority integration. I think  
6 those with the -- I believe there is another but I  
7 can't recall it off the top of my head. But, again,  
8 it wouldn't have been -- well, I mean, there has  
9 been other seniority integrations not involving  
10 pilots, I guess is --

11 Q Those are the ones you can think of as  
12 you sit here right now that involved pilots?

13 A Yes.

14 Q Are you offering any sort of opinion in  
15 your report about TWA's financial condition at the  
16 time of the transaction with American Airlines?

17 A I am not, other than stating what I  
18 believe are -- are facts that came right out of the  
19 closing of -- of Allen Press, and Mike Day, and  
20 what's generally known that TWA was in bankruptcy at  
21 the time of the transaction.

22 Q Did you do any independent analysis to  
23 try to determine what TWA's financial condition was  
24 at the time of the American Airlines transaction?

25 A I did not. I believe I said that a few

Page 12

1 times, but --

2 Q Another of the lists that you presented  
3 in your analysis is what you called Supplement CC  
4 plus 200; correct?

5 A That's correct.

6 Q And how did you select 200 as the  
7 number to use in that list?

8 A It was largely based on the last move  
9 that the APA made having involved changing the  
10 staple point by 300-and-some odd numbers. So I  
11 assumed that if that would have been their movement  
12 on their own without any of the additional pressure  
13 from ALPA brought to bear, that somewhat less than  
14 350 would be the minimal possible move that would  
15 have occurred had ALPA brought all those other forms  
16 of pressure to bear on the negotiation. So less  
17 than the APA was -- had done on their own.

18 Q Did you use any sort of methodology to  
19 arrive at the 200?

20 A No. That just seemed the most  
21 probable.

22 Q And it seemed probable to you because  
23 previously the APA had decreased the number of TWA  
24 pilots it was proposing to staple by 316?

25 A Well, I thought the most probable would

Page 53

Page 55

1 A That is one possible outcome.  
 2 Q And you are not offering --  
 3 A You also --  
 4 Q You are not offering an expert opinion  
 5 that that would have happened; correct?  
 6 A I am not offering an expert opinion  
 7 that that would necessarily have happened.  
 8 Q And you -- and you are not assessing  
 9 any probability that negotiations would have been  
 10 concluded prior to September 11th, are you?  
 11 A I'm not. I'm also not offering any  
 12 evidence on how far the negotiation would have  
 13 proceeded and how many issues would have been agreed  
 14 to by the time 9/11 occurred. We are talking about,  
 15 you know, a negotiation process that would have  
 16 occurred more intensively had ALPA not been in  
 17 breach. Where it would have been by September 11th,  
 18 I cannot say. I can't offer an opinion on that.  
 19 Q Does your analysis take into account  
 20 any impact that the events of 9/11 and their effect  
 21 on the airline industry had on the negotiations  
 22 between the APA and the TWA MEC?  
 23 A Sorry. Can you say the question again?  
 24 Q Yeah. The question is, does your  
 25 analysis take into account any impact that the

1 Q And you don't have any specific  
 2 information that the APA was prepared to expose more  
 3 American Airline pilots to furlough than it did;  
 4 correct?  
 5 A I have only the understanding that the  
 6 APA wanted to be fair and reasonable. So whether --  
 7 Q So could you answer --  
 8 A -- whether they would have been willing  
 9 to furlough more American Airlines pilots in the  
 10 absence of ALPA's breach, I believe they would have.  
 11 Q My question is, do you have any  
 12 information, any evidence that you are aware of in  
 13 this case that the APA was willing to expose more  
 14 American Airlines pilots to furlough in the wake of  
 15 9/11?  
 16 A Well, the largest move on the staple at  
 17 the bottom of the list was after 9/11, so I have  
 18 some evidence.  
 19 Q My question is, do you have any  
 20 evidence that the APA was willing to expose more  
 21 American Airline pilots to furlough relative to the  
 22 ones that were exposed in Supplement CC?  
 23 MR. JACOBSON: Objection. Asked and  
 24 answered, I believe.  
 25 THE WITNESS: Their largest move on the

Page 54

Page 56

1 events of 9/11 and their effect on the airline  
 2 industry had on the negotiations between the APA and  
 3 the TWA MEC?  
 4 A Well, as I said, I -- I -- I believe it  
 5 does. You know, whether 9/11 would have been  
 6 relevant to the negotiation depends on whether the  
 7 negotiation was completed before 9/11 or whether  
 8 negotiations were in their final stage before 9/11.  
 9 The largest move that the APA made was after 9/11  
 10 so, you know, it was -- it was -- it's a reality I  
 11 took into consideration.  
 12 Q Did you take into consideration that  
 13 the events of 9/11 and their aftermath made the  
 14 prospect of furloughs significantly more likely?  
 15 A I did.  
 16 Q And in your list, when you suggest that  
 17 fewer TWA pilots should have been stapled, you are  
 18 at the same time saying that more American Airlines  
 19 pilots should have been exposed to furlough;  
 20 correct?  
 21 A That's correct.  
 22 Q And you think that's something the APA  
 23 could have been persuaded to do had ALPA pursued the  
 24 actions you list in your report; correct?  
 25 A Yes.

1 bottom staple was after 9/11, so, yes.  
 2 BY MR. TOAL:  
 3 Q And do you have any evidence beyond  
 4 that?  
 5 A No.  
 6 THE WITNESS: Could we take five  
 7 minutes?  
 8 MR. TOAL: Yeah. Go off the record.  
 9 VIDEO SPECIALIST: The time is 10:53.  
 10 Off the record.  
 11 (Brief recess.)  
 12 VIDEO SPECIALIST: This begins tape  
 13 number two. The time is 11:12 a.m. We are back on  
 14 the record.  
 15 (Salamat-17 TWA pilot seniority  
 16 integration summary of Supplement CC from  
 17 APA's mergers and acquisitions committee  
 18 dated December 14, 2001 marked for  
 19 identification.)  
 20 BY MR. TOAL:  
 21 Q Mr. Salamat, I show you a document  
 22 entitled a TWA pilot seniority integration summary  
 23 of Supplement CC from APA's mergers and acquisitions  
 24 committee dated December 14, 2001. I mark this as  
 25 Salamat Exhibit-17.



1 Let me know if this is a document you've seen  
2 before.

3 A I don't believe I have. Give me a  
4 moment. No. I don't believe I've ever seen this  
5 document.

6 Q Okay. Let me direct your attention to  
7 page 8754 using the pages at the bottom right.

8 A I have it.

9 Q Okay. You see in the paragraph at the  
10 bottom of the page it says, last sentence, at the  
11 same time, the two merger committees did agree on  
12 the basic guidelines for a fair integration, and  
13 carrying over onto the next page, first bullet point  
14 says, fair integration should preserve the career  
15 expectations of the members of each pilot group, the  
16 pre-transaction expectations at the time the  
17 transaction was entered into.

18 Do you see that?

19 A I do.

20 Q If you in your analysis had used the  
21 definition of reasonableness that required  
22 preservation of the pre-transaction career  
23 expectations of each pilot group, would that have  
24 affected your analysis?

25 A Well, I did, first of all, the

1 position they have will be a -- a generally good  
2 proxy for a list which optimally assigns pilot  
3 seniority numbers according to their career  
4 progression.

5 Now, there is a dynamic issue to this which  
6 says, will pilots be able to progress as fast as  
7 they would otherwise? Given that the TWA pilots  
8 were largely older than the American Airlines pilots  
9 in the seniority list where they were -- were  
10 grouped under the Salamat model and, in fact, all of  
11 these models, except specifically for the income  
12 optimal model, I know as an absolute fact that the  
13 only way the TWA pilots could have slowed the  
14 progression of any American Airlines pilots would,  
15 for them, younger TWA pilots would have been grouped  
16 ahead of older American Airlines pilots, and that  
17 wasn't the case under any of the lists.

18 So I know that as a fact, that -- that none of  
19 these lists would have slowed the American Airlines  
20 pilots. So we have two things we looked at,  
21 comparison to the income optimal list and just a  
22 comparison of the demographics of the two lists.

23 Q And what's the income optimal list?

24 A That would be called the -- the  
25 fairness list.

1 pre-transaction expectations at the time the  
2 transaction was entered into. So, you know, this  
3 is -- this is the issue that comes up in every  
4 seniority arbitration and what people's expectations  
5 were pre-transaction. And so it's been considered  
6 in all of those that I've been involved in and it  
7 was considered in this one.

8 Q Did you consider how your Salamat list  
9 affected the career progression of American Airlines  
10 pilots?

11 A To the extent that I compared each  
12 model I looked to to the income optimal model, yes.

13 Q Did you compare whether the Salamat  
14 damage model would have slowed the career  
15 progression of American Airlines pilots relative to  
16 what it would have been prior to the transaction  
17 between American Airlines and TWA?

18 A I did.

19 Q And what assessment did you reach about  
20 whether the Salamat damage model would have slowed  
21 the career progression of American Airlines relative  
22 to the progression they would have had at American  
23 Airlines absent the transaction?

24 A Well, the income optimal model which  
25 gives pilots sufficient seniority to hold the

1 Q Do you have an understanding that the  
2 most junior American Airlines pilot hired prior to  
3 April of 2001 was a gentleman named B.D. White?

4 A That name sounds familiar.

5 Q And do you have an understanding that  
6 the APA's proposals regarding seniority integration  
7 were based on an assessment of the career  
8 progression of B.D. White?

9 A I -- I -- I know that their conditions  
10 and restrictions were tied to that individual.

11 Q Do you have an understanding that their  
12 seniority numbers were tied to that individual?

13 A Sorry. I'm -- I'm -- I'm not sure what  
14 you are -- you're asking me.

15 Q Do you have an understanding that the  
16 manner in which the APA constructed the list that it  
17 proposed Supplement CC was based on the anticipated  
18 career progression of B.D. White?

19 A I was unaware of that fact. It doesn't  
20 surprise me, but I was -- I was not aware of that  
21 fact.

22 Q Why does it not surprise you?

23 A Because B.D. White was tied to the  
24 sunset clause for bidding restrictions.

25 Q Did you assess whether your Salamat

1 order to create a merged group, the American  
2 Airlines Pilots. It also picked a staple -- I'm  
3 sorry -- a first insertion point at the top of the  
4 list that gave the APA credit for the larger  
5 equipment that they had, a transaction date. So in  
6 both of those ways I believe it was taken into  
7 account.

8 Q Any other way that you can think of as  
9 you sit here today?

10 A No.

11 Q Also referenced in this bullet point is  
12 differences based on the nature of the carrier's  
13 pre-transaction operations. Do you see that?

14 A Yes.

15 Q Does your Salamat damage model take  
16 into account differences based on the nature of  
17 TWA's and American's pre-transaction operations?

18 A Well, the nature of their  
19 pre-transaction operations, the way I understand it,  
20 and the way it was factored into my model was that  
21 the APA pilots were operating large wide-body  
22 aircraft, and so the treatment of the top of the  
23 list was consistent with that, so --

24 Q Does it take into account those  
25 differences in any other way?

1 A Okay. Again, by using a discounted  
2 number of positions for the TWA pilots.

3 Q Any way other than that?

4 A No.

5 Q Also referenced here are differences in  
6 pre-transaction pay benefits and working conditions.  
7 Do you see that?

8 A Yes.

9 Q Does your Salamat damage model take  
10 into account differences in pre-transaction pay,  
11 benefits, and working conditions between the  
12 American and TWA pilots?

13 A No. Only the number of positions that  
14 they had.

15 Q Also referenced here are differences in  
16 the pre-transaction, long-term job security based on  
17 the carrier's financial condition. Do you see that?

18 A By using the later date, having  
19 rationalized the TWA fleet as the baseline for  
20 counting the number of positions that TWA brought to  
21 the merger, yes.

22 Q So is it your testimony that your  
23 Salamat damage model takes into account  
24 pre-transaction, long-term job security based on the  
25 carrier's financial condition in that way?

1 A Yes.

2 Q Does it take into account those  
3 differences in any other way?

4 A No.

5 Q Have you formed a view as between  
6 American Airlines and TWA prior to the transaction,  
7 which pilot group had better long-term job security?

8 A No, I've not.

9 Q Are you able, based on the information  
10 you are aware of, to form a view about which pilot  
11 group, prior to the transaction, had better  
12 long-term job security?

13 A Well, if I was a betting man, I would  
14 have bet on American Airlines. But, you know, as I  
15 say, I haven't done any financial analysis of the  
16 two carriers. But the fact that TWA was in  
17 bankruptcy and American Airlines wasn't would make  
18 me think that the American Airlines pilots had a  
19 greater chance -- had -- had greater job security  
20 than the TWA pilots did.

21 Q Do you have any basis for saying which  
22 pilot group, prior to the transaction, was at  
23 greater risk of furloughs?

24 A I would have to say that the TWA pilots  
25 were at greater risk of furlough.

1 Q Do you have any understanding of which  
2 pilot group had higher pay rates?

3 A It's my understanding that the American  
4 Airlines pilots had higher pay rates.

5 Q In the second bullet point, the APA  
6 says that the TWA pilots' rightful place proposal  
7 credits the TWA pilots for assets which were not  
8 acquired by American and for other assets which will  
9 not be deployed in the consolidated operation.

10 Do you see that?

11 A I do.

12 Q Did you analyze the extent to which the  
13 TWA pilots' rightful place proposal credited the TWA  
14 pilots for equipment that either would not be  
15 accepted by American or would not be deployed in the  
16 consolidated operation?

17 A Did I analyze the rightful place  
18 proposal?

19 Q Did you analyze the extent to which the  
20 rightful place proposal credited the TWA pilots for  
21 equipment that American Airlines either wouldn't  
22 acquire or wouldn't ultimately deploy?

23 A Well, my understanding is that the --  
24 the rightful place proposal credited the TWA pilots  
25 with all of the equipment that they had as of

# **EXHIBIT 7**



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE  
CIVIL ACTION NO. 02-2917 (JEI)

PATRICK BRADY, et al.,

Plaintiffs,

vs.

AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL,

Defendant.

-----  
January 22, 2013  
-----

Oral sworn deposition of HENRY FARBER, ASHFELTER & ASHMORE, 32 Nassau Street, Princeton, New Jersey 08540, was taken at the law office of Archer & Greiner, 700 Alexander Park, Princeton, New Jersey, before Jean B. Delaney, Certified Shorthand Reporter and Notary Public of the State of New Jersey, on the above date, commencing at 9:43 a.m., there being present:

GREEN JACOBSON, P.C.  
BY: ALLEN P. PRESS, ESQUIRE  
7333 Forsyth Boulevard  
St. Louis, Missouri 63105  
(314) 862-6800  
Attorneys for Plaintiff

TRUJILLO, RODRIGUEZ & RICHARDS, LLC  
BY: LISA RODRIGUEZ, ESQUIRE  
258 Kings Highway East  
Haddonfield, New Jersey 08033  
(856) 795-9002  
Attorneys for Plaintiff

D E G N A N & B A T E M A N, I N C.

Page 71

1 mean difference statistic. And so -- so I tasked my  
2 people with reading those reports, looking for other  
3 documents that could help give us the information on  
4 merger by merger of both the background and the  
5 outcome.

6 Q How much time did you personally spend  
7 reviewing these documents?

8 A Without consulting my time sheets, I  
9 couldn't tell you exactly how many hours I did.

10 Q And what's your best estimate, as you  
11 sit here today?

12 A Two or three days.

13 Q And how long were those days?

14 A My days are normal days, you know eight  
15 hours, nine hours, ten hours sometimes.

16 Q And how much time --

17 A When I was younger, my days were  
18 longer.

19 Q How much time did you spend on this  
20 engagement overall, personally?

21 A This past year?

22 Q From the time you were retained until

23 --

24 A -- this morning.

25 Q Until today.

Page 72

1 A I can tell you that it's less than ten  
2 days, more than three days -- more than three days.

3 Q And with whom did you work when you  
4 referred to members of your staff?

5 A Okay. I work with a small firm in  
6 Princeton called Ashenfelter and Ashmore, and David  
7 Ashmore is a principal of that firm, and he is -- is  
8 -- the way -- let me tell you how we operate.

9 Basically, I'm the expert. He runs the day-to-day  
10 under my direction, and we -- and then we have a  
11 staff of three Ph.D. economists. Actually over the  
12 time period this has gone on for a while, probably  
13 there were four staff economists involved who did  
14 the work under my oversight, David's day-to-day  
15 supervision, collecting information, you know,  
16 putting it in the spreadsheet, doing the calculated  
17 we wanted. You know, I would meet with the staff  
18 regularly to talk about where we were, ask  
19 questions. I'd look at documents that they thought  
20 were ambiguous to help them out and so on.

21 Q Okay. Other than the documents listed  
22 on appendix B to your report, did you consider any  
23 other documents?

24 A Not that I recall sitting here now. I  
25 mean --

Page 73

1 Q And --

2 A It's hard. You know, it wouldn't  
3 surprise me that there is something that somehow I  
4 looked at didn't make it on the list, but we tried  
5 to be quite careful about that.

6 Q Did you have access to other documents?

7 A Well, we all have access to the web.  
8 I'm not sure what you mean.

9 Q Did you have other -- access to other  
10 documents related to this case?

11 A I don't -- I don't quite know how to  
12 answer that. You are asking me, do I have access to  
13 things I didn't look at so they didn't make it into  
14 this report?

15 Q Yeah.

16 A I don't know. I assume so because I  
17 presume I could have asked for some things that I  
18 didn't think of, and, you know, TWA pilots'  
19 attorneys might have been able to give it to me, for  
20 example. I don't know. Maybe there is some legal  
21 documents. I just don't know.

22 Q Well, who -- who determined the  
23 documents to which you would have access?

24 A Well, as these things generally go, TWA  
25 pilots and lawyers, when they retained us, started

Page 74

1 us off with some documents that they thought we  
2 ought to look at, the complaint and so on, and the  
3 jury award. You know, as we know, TWA has already  
4 been found guilty of their duty of fair  
5 representation, of violating their duty of fair  
6 representation. And we then said we need these  
7 arbitration awards. As I understand it, counsel for  
8 APA, or APA through counsel -- through counsel  
9 provided us with arbitration awards. I think that's  
10 right. I'm sure we got them indirectly through the  
11 TWA pilot attorneys. We say we need arbitration  
12 awards, and they say, okay, we know where to get  
13 those for you, and they got them. And then we did  
14 some web searching to find outcomes of some other  
15 cases that -- and so on. So --

16 Q Did you ask for any documents that you  
17 weren't able to get access to?

18 A No. Not that I recall, I should say.  
19 Not that I recall. This is not a case where I felt  
20 very frustrated by lack of availability of things.

21 Q And you don't have a recollection of  
22 asking for any other documents?

23 A No. That's correct. That's correct.

24 Q Did you review any of the filings in  
25 TWA's bankruptcy proceeding?

Page 75

Page 77

1 A No.  
 2 Q Did you think that would be relevant to  
 3 your analysis?  
 4 A I've -- I've never seen a bankruptcy  
 5 filing. I'm not sure what's in them. So it's --  
 6 no. I don't think so, no.  
 7 Q Was TWA's financial condition at the  
 8 time of the transaction with American relevant to  
 9 your analysis?  
 10 A Yes.  
 11 Q In what way?  
 12 A A part -- one of the factors we  
 13 considered in choosing comparable merger lists was  
 14 the financial condition of the acquired carrier.  
 15 And as a result, in order to make them comparable,  
 16 we tried to find cases where -- with some, at a  
 17 crude level, similarity with TWA's financial  
 18 condition. So, of course, TWA's financial condition  
 19 was relevant.  
 20 Q And if you had determined that TWA was  
 21 either not flying at the time of the transaction or  
 22 that it imminently would not be flying, would that  
 23 have affected your analysis?  
 24 A Potentially.  
 25 Q In what way?

Page 76

1 A I don't know. I didn't do that  
 2 analysis.  
 3 Q But would it have -- have affected the  
 4 other transactions that you viewed as comparables?  
 5 A Potentially, yes.  
 6 Q Potentially or actually?  
 7 A I would have to look at the list, but I  
 8 assume it would change at least some of the  
 9 comparables, yes.  
 10 Q And did you make determinations in your  
 11 report based on which airlines either were not  
 12 flying or were at imminently at risk of not flying  
 13 on the one hand, and airlines that were in a  
 14 weakened financial condition but still flying and  
 15 expected to continue flying for the foreseeable  
 16 future?  
 17 A I -- I -- I don't know what you mean by  
 18 foreseeable future, but were not imminently going to  
 19 shut down. But were -- I mean -- I don't know what  
 20 it means to fly for the foreseeable future, but I  
 21 did make distinctions like that, yes.  
 22 Q And if you had determined that TWA was  
 23 at risk of imminent grounding of its planes, would  
 24 that have caused you to shift the group of  
 25 comparables from those where the -- the airlines

1 either were not flying or imminently were expected  
 2 not to fly?  
 3 MR. PRESS: Objection. That's been  
 4 asked and answered.  
 5 MR. TOAL: I didn't finish my question.  
 6 BY MR. TOAL:  
 7 Q Would that have led you to change your  
 8 comparables to the group that was either not flying  
 9 or imminently expected not to fly?  
 10 MR. PRESS: I object to form. That's  
 11 been asked and answered.  
 12 THE WITNESS: I -- I never created such  
 13 a group, but it would have certainly shifted --  
 14 would have likely shifted the set of comparables,  
 15 yes.  
 16 BY MR. TOAL:  
 17 Q Did you ever calculate what the  
 18 proportional difference in mean ranks was for those  
 19 airlines where the acquired airline was either not  
 20 flying or was expected imminently not to be flying?  
 21 A Well, table one contains the  
 22 proportional mean difference -- the proportional --  
 23 the proportional mean difference for all of the  
 24 airlines we were able -- for which we were able to  
 25 calculate it, but I never grouped them in the way

Page 78

1 you are suggesting.  
 2 Q Take a look at table one of your  
 3 report. This is right after your signature page.  
 4 A Yes, yes.  
 5 Q Now, of this group, which of the  
 6 acquired airlines on this list fall within the  
 7 category of not flying at the time of the  
 8 acquisition or expected to stop flying imminently?  
 9 A I -- I -- I honestly -- I want to say  
 10 Lynx, but beyond Lynx, I'm not sure. I don't -- I  
 11 haven't memorized their status.  
 12 Q Did you ever do an analysis of how the  
 13 proportional difference in mean rank for the  
 14 American Airline/TWA transaction compared to those  
 15 in which the acquired airline either was not flying  
 16 or was expected to stop flying imminently?  
 17 A No.  
 18 Q As you look at this chart, are you able  
 19 to make a determination about how the proportional  
 20 mean difference in ranks for TWA/American Airlines  
 21 would compare to those other airlines -- those other  
 22 transactions?  
 23 A No, no.  
 24 Q Do you agree that the proportional mean  
 25 rank for the American/TWA transaction is roughly

Page 131

1 substantial, and there was -- I relied here on a  
2 presentation by American which outlined the -- the  
3 assets that TWA was going to bring to the -- to the  
4 merger.

5 Q And did you identify any transactions  
6 in which you felt the acquiring -- the acquired  
7 airline was not bringing assets of substantial value  
8 to the transaction?

9 A I believe there were some.

10 Q And which ones can you recall?

11 A I don't recall which ones they were,  
12 but that a reason -- that would be a reason for it  
13 not to be included as a comparable transaction.

14 Q Did you do any analysis of what the  
15 value, in fact, was to American Airlines of TWA's  
16 assets?

17 A No.

18 Q Did you develop any metric to assess  
19 the value of the assets that the acquired airline  
20 was bringing to a merger?

21 A No.

22 Q Do you have the expertise to do that?

23 A That depends on the nature of the  
24 asset.

25 Q With respect to which assets would you

Page 133

1 you are asking me?

2 Q Did you make any assessment?

3 A An assessment, no.

4 Q Would that have been relevant to your  
5 analysis, what the bargaining leverage of each side  
6 was?

7 A Well, the -- the -- the -- the  
8 situation was tainted by the fact that ALPA shirked  
9 its duty of fair representation, so that what I  
10 observed as the bargaining leverage would not be an  
11 indication of something that would exist absent that  
12 bad behavior.

13 Q Did you try to make any assessment of  
14 what bargaining leverage TWA, the TWA MEC would have  
15 had relative to the APA in the absence of any breach  
16 by ALPA?

17 A Yes.

18 Q And what -- how did you go about  
19 conducting that assessment?

20 A That was simply my -- my analysis. My  
21 analysis showed that the TWA pilots would have done  
22 much better on a merged list. That's an assessment  
23 of relative bargaining power.

24 Q So -- and my -- my question is really  
25 focused on, not the outcome of the negotiations, but

Page 132

1 be able to assess the value of what the acquired  
2 airline is bringing to the table?

3 A Well, for example, if they own  
4 equipment of particular types, there is a market for  
5 equipment and I can value the equipment at market  
6 value. To the extent there is markets in slots at  
7 particular airports, that's a little harder, then I  
8 begin to need someone with more expertise in the  
9 airline industry to tell me what TWA's gates at JFK  
10 were worth, for example, or what, if there are in a  
11 dominant position in St. Louis, was worth. That  
12 sort of thing.

13 Q And you didn't undertake any efforts to  
14 actually do that in this case; correct?

15 A No. I -- my -- my -- it was -- I did  
16 not quantify those. That's correct.

17 Q Were you asked to make any assumptions  
18 about what leverage TWA had in the negotiations  
19 concerning seniority integration?

20 A No.

21 Q Did you make any assessment of the  
22 leverage that TWA -- the TWA MEC had on the one hand  
23 and the APA had on the other hand in the  
24 negotiations concerning seniority integration?

25 A Did I -- did I make any assumptions,

Page 134

1 whether you did any assessment of the bargaining  
2 leverage that each side had in the negotiations  
3 absent any breach by ALPA.

4 A No.

5 Q In paragraph three of your report, page  
6 two, you say, at the time of the purchase, referring  
7 to the American Airline asset purchase, TWA was weak  
8 financially, but was still flying planes and entered  
9 bankruptcy as a condition of its deal with American.  
10 Do you see that?

11 A Yes.

12 Q Do you know whether American -- whether  
13 -- withdrawn.

14 Do you know whether TWA would have entered  
15 bankruptcy in the absence of any deal by American  
16 Airlines?

17 A No.

18 Q Would that be relevant to your  
19 analysis?

20 A No.

21 Q Why not?

22 A Because what I was interested in was  
23 whether TWA would continue to fly and not whether  
24 they were -- whether they were bankrupt or not, had  
25 filed for bankruptcy or not.

Page 135

1 Q And other than -- any information you  
2 had concerning proposals by Carl Ichan, did you do  
3 anything else to determine whether TWA would have  
4 been in a position to keep flying absent the  
5 American transaction?

6 A All I -- I read that article by the  
7 economist at Tuck who argued that there were other  
8 sources of cash for TWA, as well, and --

9 Q Anything other than that?

10 A No.

11 Q And do you have the expertise to  
12 determine whether an airline is likely to cease  
13 flying within any given period of time?

14 A If I put my mind to it, I'm sure I  
15 could do that.

16 Q And how would you do it?

17 A I don't know. I would have to put my  
18 mind to it.

19 I would have to, you know, look at their  
20 financial situation, you know, what their cash flow  
21 looked like, what their revenues, fixed expenses,  
22 and so on, projections for -- for passengers. It is  
23 not something I have ever done. It would take me a  
24 very long time to do, but you just asked me if I had  
25 the expertise to do it, and, essentially, what I'm

Page 136

1 saying is I could develop the expertise to do that.

2 Q As you sit here today --

3 A I don't not have the expertise, sitting  
4 here.

5 Q What would be sufficient to persuade  
6 you that, absent an American Airlines transaction,  
7 that TWA was likely to cease operations?

8 A Soon.

9 Q Soon.

10 A I don't know.

11 Q Are you offering any opinion here about  
12 what would have happened to TWA in the absence of a  
13 transaction with American Airlines?

14 A No.

15 Q And are you offering any opinion about  
16 what would have happened to the TWA pilots in the  
17 absence of a transaction with American Airlines?

18 A No.

19 Q Are you able to offer any opinion about  
20 whether, in the absence of a transaction with  
21 American Airlines, the TWA pilots would have been  
22 able to maintain their jobs as pilots?

23 A I'm assuming in my analysis that TWA  
24 would continue to fly. I'm -- as I read -- as I  
25 read the material, what I saw was that there was a

Page 137

1 bankruptcy auction. Had American not been there,  
2 there was another purchaser who presumably would  
3 have bought the assets. The airline would have  
4 flown and pilots kept their jobs.

5 Q So my question is whether you are able  
6 to offer an expert opinion as to what would've  
7 happened to the TWA pilots in the absence of a  
8 transaction with American Airlines.

9 A No. I'm relying on others' -- others'  
10 views of that. That's correct.

11 Q Whose views?

12 A Well, the views of that -- you know,  
13 I'm basically -- as I read it, I don't know if I  
14 want to call it -- quite call it an expert opinion,  
15 but I concluded, reading what I read, that TWA  
16 looked to me like they would -- likely going to fly,  
17 and I based that on the fact that there were other  
18 sources of cash for them that the fellow from Tuck  
19 talked about, and that there were other suitors in  
20 the bankruptcy.

21 Q And so what I'm asking is whether you  
22 are in a position to offer an expert opinion as to  
23 what would have happened to the TWA pilots in the  
24 absence of the American transaction.

25 MR. PRESS: I object to the form.

Page 138

1 that's been asked twice and he's answered it twice,  
2 the same way.

3 THE WITNESS: The same answer that I  
4 said --

5 BY MR. TOAL:

6 Q Well, I -- your answer was that you  
7 read an article by a professor at the Tuck School.

8 A Right.

9 Q Does that give you a sufficient basis  
10 to express an opinion as to what would have happened  
11 to the TWA pilots in the absence of the American  
12 transaction?

13 A I'm not -- I wasn't considering -- I  
14 was asked to opine on something very simple, which  
15 is had ALPA performed its duty of fair  
16 representation, what would the merged seniority list  
17 have looked like? Now, implicit in that, I don't  
18 take a stand one way or the other on the -- what  
19 would have happened to the TWA pilots had the  
20 American transaction not gone through.

21 Q So you are not offering an expert  
22 opinion on that subject?

23 A I'm not offering an opinion on that.  
24 That's correct.

25 Q If -- if it were determined that the



Page 139

1 likelihood was that TWA would have liquidated  
2 shortly after January 2001 in the absence of an  
3 American transaction, would that have affected your  
4 analysis?

5 A Yes.

6 Q In what way?

7 A I would have had to select my  
8 comparables differently.

9 Q And you are aware that the transactions  
10 you categorized as having an acquired airline that  
11 was either not flying or was about to stop flying  
12 had proportional differences in mean rank of about  
13 minus .6; correct?

14 A I don't know. I haven't done that  
15 grouping. You asked me that before. I don't know.

16 Q Look at page -- page two of your  
17 report. Paragraph five.

18 You say, seniority is an important factor in a  
19 pilot's career. It influences his or her home base,  
20 his or her role in the cabin (captain/first  
21 officer), et cetera. The routes and schedules he or  
22 she flies, the type of aircraft the pilot flies, and  
23 also the order in which layoffs or furloughs occur.  
24 Thus, a pilot's relative position on the seniority  
25 list is a central determinate of the pilot's

Page 140

1 earnings. Do you see that?

2 A Yes.

3 Q What are the other determinates of a  
4 pilot's earnings?

5 MR. PRESS: Really? Object to the form  
6 of the question as being over broad.

7 THE WITNESS: Well, their preferences  
8 will affect their earnings. What airline they work  
9 for will affect their earnings, just for an example.

10 BY MR. TOAL:

11 Q Are you aware of any determinates of  
12 pilot earnings?

13 MR. PRESS: Same objection.

14 THE WITNESS: Conditional on their  
15 being a pilot already, working for a particular  
16 airline, basically their preferences are going to  
17 determine what routes they choose to bid for, what  
18 equipment they choose to bid for will be -- taken  
19 together; that pretty much determines it.

20 BY MR. TOAL:

21 Q What about the number of hours they  
22 choose to work?

23 A That's part of choosing, what they  
24 choose to bid for. That's what I meant, yes.

25 Q Have you assessed the relationship

Page 141

1 between seniority and income levels for the pilot  
2 population in this case?

3 A No.

4 Q Do you have an understanding about  
5 whether there is a difference between the pay rates  
6 for TWA pilots and the pay rates for American  
7 Airlines pilots?

8 A I have no idea.

9 Q Did you see in your review of  
10 arbitration decisions that that was a factor that  
11 arbitrators took into consideration in assessing  
12 seniority integration?

13 A Took what into consideration?

14 Q Differences in pay rates between the  
15 acquired and acquiring airline.

16 A Sometimes. I saw that sometimes.

17 Q And how -- how is that factor taken  
18 into consideration when it was?

19 A It might be a factor for -- for shading  
20 the -- the integration one way or the other. It was  
21 usually just mentioned. It was seldom one of the --  
22 I can't remember if it was ever a determining  
23 factor, how the integration was done.

24 Q And your analysis does not take into  
25 account whether there are differences in pay rates

Page 142

1 between the TWA and the American pilots; correct?

2 A That's correct.

3 Q Isn't that a component of  
4 pre-transaction career expectations?

5 A Pre --

6 Q Pre-transaction career expectations?

7 A I would imagine.

8 Q Did -- did you see in your review of  
9 arbitration decisions that arbitrators universally  
10 focus on preserving the pre-transaction career  
11 expectations of both pilot groups?

12 A Yes.

13 Q And your -- your list was constructed  
14 without regard to that factor; correct?

15 A As I said, it is without direct regard  
16 for it, but it is implicit in the method I use.

17 Q Paragraph 25 of your report, page nine.

18 You say at the bottom, with the assistance of  
19 my staff, I've reviewed information on 41 seniority  
20 list mergers. These include 29 arbitration  
21 decisions, 11 amendments to CBAs, and one reported  
22 federal decision. Do you see that?

23 A Yes.

24 Q And you list all those mergers in  
25 appendix B to your report; correct?

# **EXHIBIT 8**

Page 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE  
CIVIL ACTION NO. 02-2917 (JEI)

PATRICK BRADY, et al.,  
Plaintiffs,

vs.

AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL,  
Defendant.

January 23, 2013

Continued oral sworn videotaped  
deposition of HENRY FARBER, Ashenfelter & Ashmore,  
32 Nassau Street, Princeton, New Jersey 08540 was  
taken at the law office of Archer & Greiner, 700  
Alexander Park, Princeton, New Jersey, before Jean  
B. Delaney, Certified Shorthand Reporter and Notary  
Public of the State of New Jersey, on the above  
date, commencing at 9:30 a.m., there being present:

GREEN JACOBSON, P.C.  
BY: ALLEN P. PRESS, ESQUIRE  
7333 Forsyth Boulevard  
St. Louis, Missouri 63105  
(314) 862-6800  
Attorneys for Plaintiff  
TRUJILLO, RODRIGUEZ & RICHARDS, LLC  
BY: NICOLE ACCCHIONE, ESQUIRE  
258 Kings Highway East  
Haddonfield, New Jersey 08033  
(856) 795-9002  
Attorneys for Plaintiff

PAUL, WEISS, RIFKIND, WHARTON & GARRISON,  
LLP

Page 2

JULIE ROMM, ESQUIRE  
1285 Avenue of the Americas  
New York, New York 10019  
(212) 373-3869  
Attorneys for Defendant, ALPA  
KATZ & RANZMAN, PC  
BY: DANIEL M. KATZ, ESQUIRE  
4530 Wisconsin Avenue N.W., Suite 250  
Washington, D.C. 20016  
(202) 659-4656  
Attorneys for Defendant, ALPA

Also present: James Bateman, CLVS

Page 3

I N D E X

1	Witness	Page
2	HENRY FARBER	
3	By Mr. Toal	4
4	E X H I B I T S	
5		
6	Marked for I.D.	Page
7	Farber-12 Congressional hearing	65
8	transcript	
9	Farber-13 April 2nd, 2001 decision	75
10	from the United States Bankruptcy Court,	
11	District of Delaware	
12	Farber-14 Rough copy of the transcript	81
13	of Bill Compton	
14	Farber-15 Copy of the arbitration	97
15	decision concerning Continental Airlines	
16	and Texas International	
17	Farber-16 Copy of the arbitration	99
18	decision regarding the	
19	FederalExpress/Flying Tigers	
20	Farber-17 July 12, 1991 article from	116
21	the New York Times entitled Pan Am	
22	Agrees To Sell	
23		
24		
25		

Page 4

VIDEO SPECIALIST: Today is  
January 23rd, 2013, and this is the continued  
videotaped deposition of Henry Farber. We are now  
going on the record and the time is 9:30.  
Would the court reporter please swear in  
the witness?  
HENRY FARBER, having been duly sworn,  
was examined and testified as follows:  
BY MR. TOAL:  
Q Good morning, Professor Farber.  
A Good morning.  
Q Professor, in this case are you  
offering an expert opinion as to whether, in the  
absence of a transaction with American Airlines, TWA  
would have been able to continue to fly?  
A No.  
Q Did you do anything to analyze that  
question?  
A Yes.  
Q So you -- you made a judgment in this  
case that TWA should be categorized as an airline  
that was not in danger of ceasing operations  
imminently; correct?  
A Yes.  
Q And can you describe what your



1 get jobs at other airlines and would be at the  
2 bottom of their seniority list; correct?

3 A No, I didn't. Paragraph 33 doesn't say  
4 cease flying and not start up again. It just says  
5 ceases flying. Your statement -- the question said  
6 ceased flying and not start up again, and that's not  
7 what I say in paragraph 33.

8 Q Well, you say in paragraph 33, since in  
9 any future jobs the former airline B pilots would  
10 start at the bottom of their new employer's  
11 seniority lists, airline B pilots have minimal  
12 career expectations at airline B as of the  
13 transaction, and they could expect to be placed  
14 lower on the merged seniority list than if airline B  
15 were in better financial health; correct?

16 A Correct.

17 Q So you acknowledge in paragraph 33  
18 that, to the extent an airline is either not flying  
19 or is expected to cease flying imminently, that  
20 their career expectations at airline B are minimal;  
21 correct?

22 A Yes.

23 Q And they could also have minimal career  
24 expectations at airline B if airline B was expected  
25 to cease operations in two months; correct?

1 A I don't know. A lot can happen in two  
2 months. I'm not going -- you know, again, I -- I  
3 told you before what I meant by imminently. I mean  
4 very, very soon. I don't -- no one really knows  
5 what's going to happen in two months.

6 Q Well, no -- no one knows with certainty  
7 what's going to happen in two days either; correct?

8 A That's true. Fair enough.

9 Q So my question is, isn't it true that,  
10 if an airline is expected to cease operations in two  
11 months, that the pilots at that airline would have  
12 minimal career expectations at that airline?

13 A I don't know. They would have --  
14 because more can happen in two months than can  
15 happen in two days, they would have -- likely have a  
16 higher -- there is a higher expectation that  
17 something will come along that will help their  
18 career expectations. They would likely have better  
19 career expectations than someone at an airline who  
20 is expected to cease operation tomorrow.

21 Q And they would have lower expectations  
22 than pilots at an airline that was expected to -- to  
23 continue flying indefinitely; correct?

24 A Absolutely.

25 Q And your model doesn't take into

1 account the difference in career expectations  
2 between pilots at an airline that was expected to  
3 continue flying indefinitely and pilots at an  
4 airline that was expected to cease operation in two  
5 month's time; correct?

6 A Absolutely incorrect.

7 Q Why is that incorrect?

8 A My analysis takes that into account  
9 because in the airline mergers that we analyzed, in  
10 the list merger that we analyzed, where the --  
11 that -- expected to fly indefinitely, that's one of  
12 the cases where I consider the financial condition  
13 of the acquired airline to be good, not weak like  
14 TWA. And, therefore, they are not in the list of  
15 comparables because they are not comparable because  
16 the acquired airline is in better financial  
17 condition.

18 So that's exactly why my analysis is designed  
19 to make that distinction between someone who is  
20 working for an airline who -- that's weakened, but  
21 is still flying and doesn't expect to shut down now,  
22 and in comparison with a group where an airline has  
23 shut down or will shut down now, or an airline where  
24 there is no expectation that the airline is in  
25 trouble. Those are -- that's why there's three

1 categories. You insist on focusing on the bottom  
2 category. There is the top category, too. Those  
3 guys are not comparable to the TWA group.

4 Q So you are -- you are dividing -- you  
5 are dividing the world of -- in terms of financial  
6 condition of the acquired airline into three  
7 categories; correct?

8 A Correct.

9 Q In the top category, you have acquired  
10 airlines that are expected to continue flying absent  
11 the transaction indefinitely; correct?

12 A I would say so. I didn't do -- I  
13 didn't -- yes, I would say so, yeah.

14 Q Well, it is your analysis, so you tell  
15 me how you define the category in the -- in the top  
16 category.

17 A Again, remember, it comes from reading,  
18 in most cases, reading the arbitration report. And  
19 if the airline is healthy, there is no sign that it  
20 is -- that it is in financial -- under serious  
21 financial stress. You know, so on that basis, I  
22 make the expectation that they are going to keep  
23 flying, and that their pilots -- and the arbitrators  
24 do the same. Their pilots have reasonable career  
25 expectations because of this. I didn't put TWA in

1 that category.

2 Q And then you have a category at the  
3 bottom which is defined by airlines that are not  
4 presently flying or that are expected to cease  
5 flying imminently, which you meant in a matter of  
6 days; correct?

7 A I think so, yeah. I mean, a day, you  
8 know, yes. I didn't have a specific, you know,  
9 absolute time period in mind, but, you know, days, a  
10 week, couple weeks. Yeah. And a time period where  
11 it -- it would be hard to think of any -- of a  
12 scenario where they could keep flying. You are  
13 absolutely right, anything can happen in two days  
14 but it is not much time. Anything can happen in two  
15 months and it is more time. So, you know it's in  
16 that area, and many of the airlines at the bottom of  
17 my list are airlines that had ceased flying already.

18 Q And between those two categories you  
19 have a category of acquired airlines that are in  
20 weakened financial condition which could be anything  
21 from expected to cease flying within a matter of  
22 weeks to not healthy but -- but no foreseeable  
23 expectation that they were going to stop flying;  
24 correct?

25 A I suppose. I mean, I don't -- I don't

1 know a matter of some weeks, some unspecified number  
2 of weeks, airlines that are not healthy and need an  
3 infusion of cash.

4 Q And outside of your analysis of the  
5 categories that you divided the acquired airlines  
6 into based on financial condition, are those  
7 recognized categories of financial strength of an  
8 airline?

9 A I have -- I have no idea.

10 Q Have you ever seen categories of  
11 airlines based on financial strength defined in that  
12 way anywhere else?

13 A No.

14 Q And you regard TWA, at the time of the  
15 American Airlines' transaction, comparable to what  
16 you describe as airline B in paragraph 33?

17 A No.

18 Q Now, you say, paragraph 36 of your  
19 report at the bottom of page 12, it's worth noting  
20 that bankruptcy, per se, is not a clear indicator  
21 that an airline will cease flying. Do you see that?

22 A Yes.

23 Q As of the American transaction, how  
24 many times had TWA declared bankruptcy?

25 A I don't know.

1 Q Was that relevant to your analysis?

2 A No.

3 Q So if I represent to you that the  
4 bankruptcy that TWA declared at the time of the  
5 American Airlines transaction was its third  
6 bankruptcy within about the last ten years, is that  
7 something you were aware of previously?

8 A I knew they had declared bankruptcy  
9 previously. I'm not aware of the number of times.

10 Q And do you know whether any -- any of  
11 the other acquired airlines on your table one  
12 involved airlines that had declared bankruptcy three  
13 times within the span of ten years?

14 A No.

15 Q So when you say bankruptcy is not a  
16 clear indicator that an airline will cease flying,  
17 what would you regard as a clear indicator that an  
18 airline would cease flying?

19 A Show up at the airport and the plane  
20 didn't take off.

21 Q And anything other than that?

22 A No. I don't think -- well, what we  
23 tried to do, again, was, you know, reading in the  
24 press, and trying to get some idea would they --  
25 would they likely cease flying very, very soon. I

1 can't tell you exactly what the indicator of that  
2 would be, but I can tell you that bankruptcy is  
3 clearly not an indicator that an airline is going to  
4 cease flying. You are going to be hard pressed to  
5 take a flight on an airline that hasn't declared  
6 bankruptcy.

7 Q I understand you saying bankruptcy is  
8 not a clear indicator. My question is, what is a  
9 clear indicator?

10 A I don't know. I mean -- and again,  
11 very hard -- you know, in -- in the short term, as I  
12 can say, an airline that is sort of hemorrhaging  
13 output, canceling flights, furloughing lots of  
14 employees, and, you know, there is a lot of -- there  
15 is a general view of the people -- knowledgeable  
16 people, which presumably makes its way into the  
17 press that the airline is within a very short period  
18 of ceasing flying. But even then, very hard to say  
19 that an airline is imminently -- forget the  
20 imminently -- is going to cease flying. Very hard  
21 to predict.

22 Q Did you investigate whether  
23 contemporaneous commentators offered the opinion  
24 that TWA was expected to cease flying at or around  
25 the time of the American Airlines transaction?

# **EXHIBIT 9**

**In the Matter of the Seniority List Integration Arbitration**  
**Under ALLEGHENY-MOHAWK Labor Protective Provisions, Section 13(b)**  
**Pursuant to the Dispute Resolution Agreement Among and Between**  
\*\*\*\*\*

**---THE PILOTS OF ---** :

**REPUBLIC AIRLINE/CHAUTAUQUA AIRLINES/SHUTTLE AMERICA,** :  
**represented by International Brotherhood of Teamsters (“IBT”),** :  
: **FRONTIER AIRLINES, represented by Frontier Airline Pilots** :  
**Association (“FAPA”),** :  
: **MIDWEST AIRLINES, represented by Air Line Pilots Association,** :  
**International (“ALPA”),** :  
: **LYNX AVIATION, represented by United Transportation Union (“UTU”)** :  
: **-and-** :  
: **REPUBLIC AIRWAYS HOLDINGS, INC., (“RAH”)** :  
**[on behalf of Itself and Its Affiliates Chautauqua Airlines, Inc.,** :  
**Republic Airline, Inc., Shuttle America Corp., Frontier Airlines, Inc.,** :  
**Midwest Airlines, Inc., and Lynx Aviation, Inc.]** :  
\*\*\*\*\*

**APPEARANCES**

**For UTU/Lynx Aviation Pilots: Clinton J. Miller, III, General Counsel**

**For ALPA/Midwest Pilots: Highsaw, Mahoney & Clark, P.C.**  
**By John O’Brien Clark, Jr.**

**For FAPA/Frontier Pilots: Allison, Slutsky and Kennedy, P.C.**  
**By Wesley G. Kennedy**

**For IBT/Republic, Chautauqua,**  
**Shuttle America Pilots: Baptiste & Wilder, P.C.**  
**By William R. Wilder**

**For RAH, Inc.: Ford & Harrison, LLP**  
**By Thomas J. Kassin**  
**Lilia R. Bell**

**MERGER COMMITTEE CHAIRS**

**Capt. Anthony Freitas, Midwest**  
**Capt. Mark Manausa, Lynx**  
**Capt. Jeffrey Thomas, Frontier**  
**Capt. Daniel Sneddon, Republic**

**TECHNICAL ADVISORY TEAM**

**Capt. Anthony Freitas, Midwest**  
**Capt. Eve Grauer, Republic**  
**F.O. Trevor Jenkins, Frontier**  
**Capt. Cory Sewell, Lynx**  
**Mr. Ken Pack, RAH, Inc.**

### **DISCUSSION**

Arbitrators have uniformly determined that the *Allegheny-Mohawk* “fair and equitable” standard is satisfied if the integration preserves the job expectations and relative bidding positions that employees held prior to the merger. In fleshing out that *Allegheny-Mohawk* standard in the construction of an integrated seniority list for pilots, most informed practitioners acknowledge the appropriateness of considering goals established in ALPA's experience-based Merger Policy. In that regard, a large body of arbitral precedent has evolved around application of the “fair and equitable” standard to the integration of pilot employee seniority lists. In one such recent decision, the arbitrators observed that the lodestar standard posits accomplishment of “the following goals, in no particular order: a. Preserve jobs; b. Avoid windfalls to [any] group at the expense of [any] other(s); c. Maintain or improve pre-merger pay and standard of living; d. Maintain or improve pre-merger pilot status; e. Minimize detrimental changes to career expectations”. Delta/Northwest, (R. Bloch, D. Eischen, F. Horowitz at 13, 2008).

In his “Expert Recommendation” regarding the integration of the “Domestic” and “Overseas” pilots of Air New Zealand, the late great David Feller observed:

There is general agreement among those who have dealt with pilot seniority questions following airline mergers that, in the words of the late David A. Cole in the Easter-Mackey case, “The essential object of our exercise is to prevent impairment, so far as possible, of the job security and the earning and promotional opportunities which each of the pilot groups had on its own airline prior to the merger.” Much earlier, in connection with the Braniff-Mid-Continent merger, the principle was stated by the arbitrators in the following words: “It is our purpose to see that each [pilot] on the two lists would retain all they had prior to the merger, would accrue those things which they would have had without the merger, and at the same time be in a position on the integrated lists to permit them to share equitably in any promotional opportunities which will arise as a result of the merged operation. . . . Seniority is, of course, highly relevant in the achievement of the objective stated, in various forms, by almost everyone who has dealt with this question”. Seniority, however, is a relative factor. As Professor Benjamin Aaron has said, quoting David Cole in the Pan-American case, “A seniority list (is) not determined solely by time, ... it reflects the priority of job rights and opportunities of employees as among themselves which the employer agrees to respect.”

**Midwest**

By any objective measure, it cannot be denied that Midwest Airlines was an air carrier on the cusp of failure well down the road to extinction at the time of the transaction. But the record plainly establishes that the pilots of Midwest do not come to this proceeding as mendicants. In all fairness, the Midwest pilots are entitled to vindication in this proceeding of both real and constructive equities they brought to the merger.

In the vernacular, the very word "seniority" is equated with length of service. Appropriate recognition of many long years of additional career development by the Midwest pilots is intuitively fair and equitable in this seniority list integration. *See e.g., Chautauqua-Shuttle America*, at 11 (Richard R. Kasher 2005). Also, Midwest as a branded airline did not cease to exist when it was acquired by RAH. More specifically, before and after the acquisition, Midwest provided the platform for Republic pilot crews to fly 12 otherwise grounded E-170s. In addition, along with Frontier, Midwest has been a post-acquisition platform for "branded" flying of E-190 aircraft, which RAH pilots had not and could not otherwise have operated in FFD service. Even though the Midwest pilot group brought no metal, *per se*, to the table, fairness requires that the contingent of MEA pilots deemed "active" by the Bloch II SBA decision be accorded constructive equity credit in these proceedings for their share of that enhanced E-jet flying.

One can take no satisfaction in validating the hard cold fact that no reasonable interpretation of fairness and equity justifies placing the remaining pre-acquisition furloughed MEA pilots anywhere but at the bottom tier of the IMSL. There is no evidentiary basis for any expectation that they might have been recalled to active service prior to the acquisition transactions. Nor can they shelter under the protective penumbra of the Bloch II decision, because they were furloughed prior to the transactions. ALPA's theory that RAH, Inc. effectively orchestrated those pre-acquisition furloughs and the eventual demise of Midwest Airlines, by manipulating events beginning in September 2008, is not established by a preponderance of persuasive record evidence and simply cannot be sustained by innuendo and conjecture.

**Lynx**

As to the Lynx pilots, their reasonable expectations for career advancement and job security were the least of the active pilot groups, ranking above only the MEA pre-transaction furloghees. However, the reduced circumstances of the Lynx pilot group proximately caused by the situation on their own ground at transaction time was exacerbated by post-transaction decisions of RAH Inc. In particular, this included liquidating turboprop aircraft Lynx pilots were flying and reallocating RAH-crewed small regional jets to service the Lynx Aviation market.

These facts establish a mixed bag of equities for the Lynx Pilots. On the one hand, they operated only turboprop aircraft, had accumulated only limited seniority while flying for a startup operation that promptly went bankrupt and flew under less favorable wages and working conditions. On the other hand, the Q400 was comparable in seating capacity and productivity to the E-170, to which most of the Lynx Aviation market flying was transferred after acquisition. Treatment of all Lynx pilots as active, with appropriate placement to give them access to that flying is fair and equitable.

# **EXHIBIT 10**



SENIORITY INTEGRATION ARBITRATION BOARD

In the Matter of the	)	
Seniority Integration Dispute	)	
	)	
Between	)	OPINION
	)	
THE PILOTS OF NORTHWEST AIRLINES	)	AND
	)	
And	)	AWARD
	)	
THE FORMER PILOTS OF REPUBLIC AIRLINES	)	
	)	

OPINION

The matter considered herein is before the present Arbitration Board composed of Captain Terrence P. O'Mahoney, Captain Kim Snider and Thomas T. Roberts, serving in the capacity of Chairman. The task of the Arbitration Board is to integrate the seniority list composed of flight deck operating crew members formerly employed by Republic Airlines with the seniority roster of the flight deck operating crew members of Northwest Airlines in a fair and equitable manner. In the fulfillment of that charge, the January 1985 Merger Policy adopted by the Air Line Pilots Association constitutes the governing document.

ADDITIONAL CONCEPTS ADVANCED BY THE PARTIES  
OR SUGGESTED BY ALPA MERGER POLICY

A study of the record made before the Arbitration Board, as well as a review of applicable arbitral precedent, confirms that to whatever extent possible the career expectations of the respective pilot groups, as those expectations existed prior to the merger, are to be maintained and protected. Any recognition of career expectations must include elements of individual pilot income, the nature of the flying assignments available, and pre-merger status advancement opportunities. The Award herein seeks to protect such career expectations of the affected pilots so long as that may reasonably be accomplished on a merged airline.

The judgment to adopt the integration technique set forth herein was further influenced by considerations of the contribution of each pilot group to the merged airline. To put it in the vernacular of the pilots, a study was made of "what it was that each pilot group brought to the merger". In that undertaking, it was noted that Northwest Airlines and Republic Airlines were dramatically different operations prior to the merger. Northwest flew primarily long haul and overseas routes while Republic concentrated on shorter segments. The Northwest pilots operated mostly wide-body equipment while the Republic pilots were limited to the flight deck of narrow-body aircraft. Certain other considerations, however, tend to soften this disparity. Both pilot groups included trained and experienced airmen. While at the time of the merger Republic Airlines had but recently returned to

# **EXHIBIT 11**

Flying Tiger Lines and Seaboard World Airlines [1981]

FARBER-002831

FLYING TIGER LINES, INC

AND

SEABOARD WORLD AIRLINES, INC.

MERGER OF SENIORITY LISTS

1981

TABLE OF CONTENTS

VOLUME II

Discussion and Opinion	142
Award	185
Working Pilots Integrated Entitlement Chart	Appendix A
Integrated Seniority List	Appendix B

March 16, 1981

FARBER-002832

On the basis of the extensive record, I consider the factors hereinafter set forth to be relevant and pertinent to this case.

The Financial Strength of the Two Carriers

The financial condition of the carriers is considered relevant because the value of the jobs brought to the merger by the pilots of each carrier is affected by the future security of those positions. A carrier's financial condition will impact on its ability to borrow sufficient funds to modify, replace or expand the existing fleet, and the cost of that borrowing. For pilots of a weak or tentative carrier, the receipt of jobs, and job protection, with a healthy and expanding carrier represents a significant reward which is an important factor in balancing the advantages that each group obtained from the merger. In this case FTL was a healthy and expanding carrier; SWA was a carrier whose future was tentative prior to the merger.

The FTL pilots emphasized the recent history of large operating losses by SWA on its scheduled air transport operations as evidence of SWA's "failing" condition. It should be noted that the air cargo industry is a barometer of the world economic climate. The entire industry, including both SWA and FTL have experienced operating losses recently. The poor performance of SWA may be due in part to general industry wide conditions.

However, I conclude that SWA's entire corporate operation rather than a part of it is the appropriate focus in connection with any claims of a lack of continued viability. SWA's non-airline activities are all related

# **EXHIBIT 12**



GEORGE NICOLAU, P.C.

125 EAST 101st STREET  
NEW YORK, N.Y. 10003

(212) 777-5032


RECEIVED

JUN 22 2000

CONTRACT ADMINISTRATION

June 15, 1997

TO: John McGuinn, Denis Gordon, Michael Madigan,  
Rachel Suarez, Richard Yardell and John Campbell

FROM: George Nicolau 

RE: Continental/Frontier

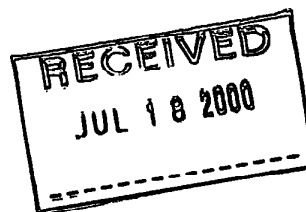
-----

Enclosed for each of you is a copy of my Opinion and Award in the above-captioned matter.

I appreciated your professionalism throughout the proceeding.

Best of luck to you all.

GN:rcf  
Enclosure



FARBER-003155

THE SENIORITY INTEGRATION OF  
CONTINENTAL AIRLINES AND FORMER  
FRONTIER AIRLINE PILOTS

OPINION  
and  
AWARD

**APPEARANCES:**

For the Continental Airline Pilots Merger Committee:

Gordon and Barnett  
by Denis F. Gordon, Esq.

For the Former Frontier Pilots Merger Committee:

Porter, Wright, Morris and Arthur  
by John A. McGuinn, Esq.  
Gary L. Lieber, Esq.

For Continental Airlines, Inc.:

Akin, Gump, Strauss, Hauer and Feld  
by Michael J. Madigan, Esq.  
Jonathan S. Spaeth  
Rachel Suarez, Esq., Assistant General  
Counsel, Continental Airlines

This proceeding is the result of the October 2, 1986 Frontier-Continental Job Preservation and Litigation Settlement Agreement, known as the "JPA" (Joint Exhibit 1), and the Procedures For Seniority Integration, as subsequently agreed to by the Company and the Frontier and Continental Pilot Merger Committees (Joint Exhibit 3). The two documents, taken together,

- 42 -

of the nature requiring protection under 3(c)(2).

It is quite true that Frontier was an operating airline on August 23rd. But any expectations respecting its future must rest on its past. Whether the cause was "deregulation mixed with bad luck," as the Frontier pilots contend, or "conscious" but inept choices by both management and Frontier's MEC, as the CO pilots suggest, the fact is that Frontier had precious little prospect of surviving as of the day before its shut-down. It was shrinking, not expanding. It was continuously losing money, badly draining its corporate parent, People Express. Most of its assets had already been sold and leased back at less than favorable rates. No one, on that date, could have realistically believed that its prospects were bright or that the promotional expectations of its pilots were high. The issue, starkly but realistically put, was one of survival.

By the same token, it was less than reasonable to assume on August 23rd that the "failing" Frontier would be rescued by United. Though UAL did not formally pull out until four days later, it's clear that negotiations had reached an impasse some weeks before and that there was little prospect of shaking

FARBER-003197

- 43 -

UAL management's opposition to wage parity. The Frontier pilots were trapped in a battle not of their own doing, but trapped nevertheless. (In the event, even mediation by Congressman, now Senator, Wirth could not end the stalemate.) Thus, on August 23rd, rescue by UAL might have been a wish, but by objective standards it was not a reasonable expectation.

In the circumstances described, any discussion of Frontier aircraft on order or option or rates of attrition, either presumed or actual, has no meaning, for both rest on an on-going airline. In my view, the Frontier pilots have not demonstrated that the Airline would have continued, either on its own or as part of UAL. As a consequence, they have not demonstrated that they had promotional expectations required to be protected under the specific provisions of 3(c)(2).

#### The Construction of the List

The issue here is a different one. What is "fair" and "equitable" in "the unique circumstances" of this case, or, to put it another way, how should the career opportunities beyond the protected expectations be apportioned?

FARBER-003198